
Critique of Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report Public Draft

Economic Issues

December 1, 2014

Contact Information

Mark Buckley, Lizzie Gooding, Ed MacMullan, and Sarah Reich prepared this report. ECONorthwest is solely responsible for its content.

ECONorthwest specializes in economics, planning, and finance. Established in 1974, ECONorthwest has over three decades of experience helping clients make sound decisions based on rigorous economic, planning and financial analysis.

For more information about ECONorthwest, visit our website at www.econw.com.

For more information about this report, please contact:

Ed MacMullan

ECONorthwest
72 West Broadway, Suite 206
Eugene, OR 97401
541-687-0051
macmullan@econw.com

Table of Contents

Executive Summary	ES-1
1 Introduction and Context.....	1
2 The LTWT ignores relevant background information about the affected environment that would have helped inform the analysis	3
3 The LTWT relies on outdated and incomplete data	13
4 The LTWT underestimates negative impacts on the regional economy in the sellers area.....	20
5 The LTWT finds significant negative effects but the vague and incomplete proposed monitoring and mitigation plans would not address these effects	24
6 The LTWT ignores the economic costs of environmental externalities and subsidies that water transfers support.....	29
7 The LTWT underestimates the cumulative effects of water transfers.....	33

Executive Summary

The US Bureau of Reclamations and San Luis & Delta-Mendota Water Authority released the Public Draft of the *Long-Term Water Transfers Draft Environmental Impact Statement/Environmental Impact Report* (LTWT) in September 2014. The purpose of the LTWT, as we understand, is to evaluate the potential impacts of three proposed water-transfer alternatives, as well as a no action alternative. AquAlliance asked ECONorthwest to critique and provide written comments on the LTWT.

01

In general, the analysis described in the LTWT suffers from significant omissions and errors. These omissions and errors matter. As written the report provides stakeholders and decisions makers with a biased and incomplete description of the environmental and economic consequences of water transfers. In the following sections of this report we describe our critiques in detail. Our major critiques include the following.

The LTWT ignores relevant background information about the affected environment that would have helped inform the analysis. The LTWT provides a cursory description of the relevant affected environment that paints an incomplete picture of the context within which water transfers would happen. A more complete, accurate and up-to-date description would have included, for example: information from the many recent reports on California's climate and groundwater conditions; current data on water transfers; and, a market analysis of water prices, prices for agricultural commodities and how price changes influence the number and volumes of water transfers. As such, the deficient description is the shaky foundation upon which a lacking analysis rests. The resulting effort yields questionable results regarding the likely future frequency and amounts of water transfers and their environmental and economic consequences.

02

The LTWT relies on outdated and incomplete data. The analysis described in the LTWT relies on obsolete data for certain key variables and ignored other relevant data and information. For example, the analysis assumes a price for water that bears no resemblance to the current reality. It also ignored relevant research results on the impacts of groundwater pumping on stream flow depletion and the current status of groundwater levels as provided by monitoring wells. The water transfers at issue in the LTWT would not happen in an economic vacuum. Growers and water sellers and buyers react to changing prices and market conditions. The analysis described in the LTWT, however, is silent on these forces and how they would influence water transfers.

03

The LTWT underestimates negative impacts on the regional economy in the sellers area. The LTWT acknowledges that negative economic impacts would be worse if water transfers happen over consecutive years. The analysis, however, estimates impacts for single-year transfers, ignoring the data on the frequency of recent consecutive-year transfers. The analysis also fails to address the extent to which water transfers cause economic harm to water-based recreational activities.

04

The LTWT finds significant negative effects but the vague and incomplete proposed monitoring and mitigation plans would not address these effects. The LTWT proposed both a monitoring and

05

mitigation program for significant negative impacts. Implementing these programs would take planning, effort and financial resources on the part of sellers, injured third parties, and regulatory agencies. The LTWT does not include these costs. The monitoring program is vague and depends on potential sellers implementing the program. This conflict of interest pits financial gain from water sales against complete and impartial monitoring efforts. This opens the door to lax, biased, or incomplete monitoring, which could lead to negative environmental and economic consequences for third parties. The monitoring program includes monitoring subsidence, however, the program is vague on requirements and what amount of subsidence would trigger a halt in water transfers. Injured third parties would bear the costs of bringing to the sellers' attention harm caused by groundwater pumping. The analysis described in the LTWT assumes that disagreements regarding third-party damages would be settled cooperatively between third parties and sellers, without presenting evidence substantiating such an optimistic assumption. The LTWT is silent on the economic consequences of sellers and injured third parties not cooperatively agreeing on harm and compensation.

05
con't

The LTWT ignores the environmental externalities and economic subsidies that water transfers support. The LTWT lists Westlands Water District as one of the CVP contractors expressing interest in purchasing transfer water. The environmental externalities caused by agricultural production on Westlands are well documented, as are the economic subsidies that support this production. To the extent that the water transfers at issue in the LTWT facilitate agricultural production on Westlands, they also contribute to the environmental externalities and economic subsidies of that production. The LTWT is silent on these environmental and economic consequences of the water transfers.

06

The LTWT underestimates the cumulative effects of water transfers. Cumulative effects analyses under NEPA and CEQA are intended to identify impacts that materialize or are compounded when the proposed action is implemented at the same time as or in conjunction with other actions. The LTWT addresses cumulative effects for each resource area and provides a global description of the methods and actions considered for analysis in each resource area. The analysis, however, provides cursory discussion of potential cumulative effects for the regional economy, and ignores the full range of possible cumulative outcomes associated with the proposed transfer

07

1 Introduction and Context

The US Bureau of Reclamations (BOR) and San Luis & Delta-Mendota Water Authority (SLDMWA) released the public draft of the *Long-Term Water Transfers Draft Environmental Impact Statement/Environmental Impact Report* (LTWT) in September 2014. The LTWT covers water transfers that would happen between 2015 through 2024. Because the transfers would use federal and state infrastructure, the LTWT must comply with NEPA and CEQA guidelines. BOR is the lead agency regarding NEPA requirements, and SLDMWA is the lead agency for CEQA requirements.¹

The premise underlying the proposed water transfers is that sellers, mostly in the Sacramento Valley, would idle cropland, switch to less water-intensive crops, and/or substitute groundwater for surface water, and send the surface water they would otherwise have used through the Bay Delta to buyers in the south.

The proposed transfers would happen within a context of environmental conditions that both highlight the increasing demand for water throughout California and raise concerns regarding the environmental and economic effects of the water transfers at issue in the LTWT. These conditions include:

- Current drought conditions of historic proportion coming on the heels of consecutive dry years.
- Increasing concerns over the demands on groundwater and groundwater conditions throughout the state, including in the Sacramento Valley.
- Increasing competition for water from all user groups including agricultural, municipal and industrial users, and environmental requirements that help protect habitats and water quality.

Within this context, regulatory agencies face increasing demands from stakeholders for transparent decisions that rely on the best available science and information when balancing competing demands. For example, the relevant NEPA requirements for the LTWT analysis include:

“Rigorous exploration and objective evaluation of all reasonable alternatives, ...”²

AquAlliance asked ECONorthwest to review the LTWT and provide comments on the extent to which the analysis described in the report fulfills the NEPA requirement. We describe the results of our initial review and critique of the document in this report. The relatively short

¹ LTWT, page 1-1, 2-1.

² LTWT page 2-1.

public comment period limited the extent of our review. Should the comment period be extended or reopened, we may expand and revise our comments.

The remainder of our report is as follows. In the next section, Section 2, we comment on the LTWT's incomplete description of the affected environment within which the water transfers would happen. We cite sources with relevant information that if included would yield a more complete and comprehensive description of the affected environment.

In Section 3 we highlight deficiencies in the data and analysis described in the LTWT. For example, we note that the model relies on outdated prices for water and agricultural commodities—two central components of the analysis. The analysis also estimates that water transfers would happen in a static environment where water prices and commodity prices remain fixed. These conditions do not reflect the dynamic reality of water demands and use.

In Section 4 we note instances in which the analysis described in the LTWT underestimates the impacts of water transfers on the regional economy in the source-water areas.

In Section 5 we draw attention to some of the deficiencies of the proposed monitoring and mitigation programs that the LTWT's authors claim will adequately address any negative effects of the transfers. These deficiencies include the inherent conflicts of interests in the programs, excluding the costs of the programs, and vague and ill-defined critical components of the programs.

In Section 6 we describe some of the environmental and economic externalities associated with the use of the transferred water.

In Section 7, we list some of the deficiencies in the analysis of cumulative effects. For example, the analysis ignores the impacts of transfers that would happen in addition to those at issue in the LTWT.

08
con't

2 The LTWT ignores relevant background information about the affected environment that would have helped inform the analysis

The LTWT provides a cursory description of the relevant affected environment that paints an incomplete picture of the context within which water transfers would happen. A more complete, accurate and up-to-date description would have included, for example: information from the many recent reports on California's climate and groundwater conditions; current data on water transfers; and, a market analysis of water prices, prices for agricultural commodities and how price changes influence the number and volumes of water transfers. As such, the deficient description is the shaky foundation upon which a lacking analysis rests. The resulting effort yields questionable results regarding the likely future frequency and amounts of water transfers and their environmental and economic consequences.

Specific concerns regarding the LTWT's incomplete description of the affected environment in the Sacramento Valley include the following.

Incomplete description of current climate conditions

According to the California Department of Water Resources (DWR), 2013 was the driest year on record for many parts of the state.³ Such drought conditions are one reason given for why growers and municipal and industrial (M&I) users in the south would purchase water from other parts of California. The analysis described in the LTWT fails to acknowledge, however, that other parts of the state, including the Sacramento Valley, also feel the effects of drought. How agricultural and M&I water users in the north respond to recent drought conditions would affect water transfers. The authors of the LTWT exclude these factors from their analysis.

For example, in a recent letter to the BOR, the Glenn-Colusa Irrigation District (GCID) indicated they were developing a groundwater supplemental supply program and that developing this program takes priority over participating in water transfers as described in the LTWT.

"GCID's position is that it will pursue, as a priority, the proposed Groundwater Supplemental Supply Program over any proposed transfer program within the region, including Reclamation's Long-Term Water Transfer Program (LTWTP)."

³ California Department of Water Resources (DWR). 2014a. *Public Update for Drought Response Groundwater Basins with Potential Water Shortages and Gaps in Groundwater Monitoring*. April 30. Page ii.

“... It is important to underscore that GCID would prioritize pumping during dry and critically dry water years for use in the Groundwater Supplemental Supply Program, and thus wells used under that program would not otherwise be available for USBR’s LTWTP.”⁴

GCID’s focus on its own groundwater program over BOR water transfers is notable because the LTWT lists GCID as a potential seller with the largest volume of water for sale, 91,000 af.⁵ GCID’s reasons for pursuing its groundwater supply program include concerns over water availability during dry years.

“The primary objective is to develop a reliable supplemental water source for GCID during dry and critically dry years. The proposed goals are as follows:

- Increase system reliability and flexibility
- Offset reductions in Sacramento River diversions by GCIS during drought years to replace supplies for crops and habitat
- Periodically reduce Sacramento River diversions to accommodate fishery and restoration flows
- Protect agricultural production”⁶

A related point is that the LTWT fails to discuss the possibility that current climate and water conditions may represent a new benchmark rather than a deviation from past trends. The increasing number of years with water transfers (described below), and reports on climate change and its impacts on water conditions, are two arguments in support of exploring this point. For example, according to a report commissioned by the Northern California Water Association (NCWA),

“This year [2014] we face unprecedented drought conditions, following a decade of relatively dry years and increased demands on our groundwater resources. These increased demands have two principal causes. The reduced availability of surface water during dry years brings a predictable shift towards greater use of groundwater. The second is expanding and intensifying agricultural land use within the Sacramento Valley, together with increasing urban water demands, leading to increased reliance on groundwater even in ‘normal’ years.”⁷

⁴ Bettner, T. 2014. *Letter to Brad Hubbard, Bureau of Reclamation re Draft EIS/EIR on Proposed Long-Term Water Transfer Program*. Glenn-Colusa Irrigation District. October 14. Pages 1 and 3.

⁵ LTWT, Table 2-4, page 2-14.

⁶ Bettner, 2014, page 2.

⁷ Davids Engineering, Macaulay Water Resources, and West Yost Associates (DMW). 2014. *Sacramento Valley Groundwater Assessment Active Management – Call to Action*. Prepared for Northern California Water Association. June. Page 2.

Fails to consider concerns regarding the oversubscription of water resources

The analysis described in the LTWT fails to acknowledge the problem of supporting water transfers using “paper water,” or oversubscribed water in the Sacramento Valley. A report on water transfer issues in California describes one aspect of this problem.

“The inability of interested parties to agree on the volume of transferable water associated with the short-term fallowing of agricultural lands has caused substantial controversy and delays in approving certain water transfer proposals. The primary issue for interested parties is whether a fallowing-based transfer proposal would actually increase the burden on the CVP and SWP to maintain water quality and flow conditions in downstream portions of the Sacramento River and Delta because upstream transfer proponents were allowed to transfer what might prove to be ‘paper’ water.”⁸

Stakeholders in the Sacramento Valley concerned about this problem researched the extent of paper water and found that rights to water significantly exceed available supply. Testimony by the California Water Impact Network submitted to the State Water Resources Control Board concluded that, “The ratio of total consumptive use claims to average unimpaired flow in the Sacramento River Basin is about 5.6 acre-feet of claims per acre-foot of unimpaired flow.”⁹ Thus, claims on water in the Sacramento Valley significantly exceed the available supply.

Incomplete description of current groundwater conditions

The LTWT excluded current information on groundwater conditions in the Sacramento Valley. This information includes concerns regarding historically low groundwater levels in certain areas of the Sacramento Valley, related concerns over subsidence caused by depleted groundwater, and a lack of groundwater monitoring information.

According to the DWR, groundwater levels are decreasing through out California, including in the Sacramento Valley. Groundwater levels decreased since the spring of 2013, and “notably” since the spring of 2010.¹⁰ A related point, according to the DWR, is that there are “significant” gaps in groundwater monitoring data for areas throughout the state, including the Sacramento Valley.¹¹ There’s also a lack of understanding

⁸ The Water Transfer Workgroup. 2002. Water transfer issues in California. Final Report to the California State Water Resources Control Board. June, page 20.

⁹ Stroshane, T. 2012. *Testimony on water availability analysis for Trinity, Sacramento, and San Joaquin River basins tributary to the Bay-Delta Estuary*. October 26. California Water Impact Network. For Workshop #3 Analytical Tools for Evaluating the water Supply, Hydrodynamic, and Hydropower Effects of the Bay-Delta Plan November 13 and 14, 2012. Page 11.

¹⁰ DWR, 2014a, page ii.

¹¹ DWR, 2014a, page ii.

regarding groundwater recharge and interactions between surface and groundwater in the Sacramento Valley. According to the NCWA report,

“[G]roundwater changes can take many years to become apparent, and we have not yet been able to measure with certainty the long-term impacts of the current level of groundwater use as it affects our measures of sustainability.”

“Persistently declining groundwater levels in many areas of the Sacramento Valley over the past decade reveal that groundwater discharge exceeds recharge. Simply put: if the objective is to stem or reverse the trend, the groundwater balance must be adjusted either by putting more water into the ground or taking less out.”¹²

According to the DWR, the Sacramento River hydrologic region has 23 groundwater basins ranked “high” or “medium” as described by the CASGEM groundwater basin prioritization study. These rankings describe a groundwater basin’s importance in meeting demands for urban and agricultural water use. The San Joaquin River hydrologic region has nine “high,” or “medium” ranked basins.¹³

A recent report from Glenn County indicates that current groundwater levels in the county are at the lowest levels recorded going back to the start of record keeping in the 1920s.

“Data in reference to groundwater levels has been collected from both private and dedicated monitoring wells located within Glenn County, in some cases dating as far back as the 1920’s. The lowest levels in these wells were most frequently associated with measurements from the 1976-77 monitoring period, which coincided with one of the more severe droughts in California’s history. In the years following the 76-77 drought, groundwater levels often approached these historic lows but rarely fell below them. However, recent (2012-13) data indicate levels in many wells have declined below those historic thresholds and are now at the lowest levels observed since monitoring began.”¹⁴

“Readily available monitoring data obtained through DWR’s California Statewide Groundwater Elevation Monitoring (CASGEM) is available for 100 wells, and of those 100, 21 still show their lowest levels as occurring in 1977, while 21 had an all-time low water surface elevation level in 2013, and an

¹² DMW, 2014, page 10.

¹³ DWR, 2014b. *California Groundwater Elevation Monitoring Basin Prioritization Process*. June. Page 5.

¹⁴ Glenn County Water Advisory Committee, Ad-hoc Committee. 2014. *Report on Groundwater Level Declines in Western Glenn County*. May 6. Page 5.

additional 15 wells reached their lowest point in 2009-2012. Therefore, one out of every five monitored wells in the area was at its lowest-ever recorded level in 2013, and one out of every three wells monitored in the area was at its lowest-ever recorded level between 2009 and 2013.”¹⁵

14

Regarding the limited groundwater modeling described in the LTWT, consulting hydrologist Kit Custis comments,

“Because the groundwater modeling effort [described in the LTWT] didn’t include the most recent 11 years record, it appears to have missed simulating the most recent periods of groundwater substitution transfer pumping and other groundwater impacting events, such as recent changes in groundwater elevations and groundwater storage [citation omitted], and the reduced recharge due to the recent periods of drought. Without taking the hydrologic conditions during the recent 11 years into account, the results of the SACFEM2013 model simulation may not accurately depict current conditions or predict the effects from the proposed groundwater substitution transfer pumping during the next 10 years.”¹⁶

15

The DWR reports that areas of the Sacramento Valley are at risk for subsidence from depleted groundwater. Most of the groundwater basins susceptible to future subsidence are also ranked “high” and “medium” priority by the CASGEM groundwater basin prioritization analysis. According to the DWR and based on data from 2008 through 2014, approximately 36 percent of long-term wells surveyed in the Sacramento Valley are at or below the historical spring low levels. Another measure indicates that 50 percent of groundwater levels in 18 groundwater basins in the Sacramento Valley are at or below historical spring low levels.¹⁷ A white paper by a consulting engineer on groundwater use and subsidence in the Sacramento Valley noted that subsidence may happen years after groundwater pumping and that real-time monitoring of groundwater pumping “will generally tend to underestimate the long-term settlement of the ground surface.”¹⁸

16

Subsidence can cause substantial economic harm. According to a report by consulting engineers studying subsidence in California,

¹⁵ Glenn County Water Advisory Committee, Ad-hoc Committee. 2014. *Report on Groundwater Level Declines in Western Glenn County*. May 6. Page 6.

¹⁶ Custis, K. 2014. *Letter to Barbara Vlamis*, November 10. RE: Comments and recommendations on U.S. Bureau of Reclamation and San Luis & Delta-Mendota Water Authority Draft Long-Term Water Transfer DRAFT EIS/EIR, dated September 2014. Page 5.

¹⁷ DWR, 2014c. *Summary of Recent, Historical, and Estimated Potential for Future Land Subsidence in California*. Pages 9, 11.

¹⁸ Mish, D. 2008. *Commentary on Ken Loy GCID Memorandum*. Page 4.

“Land subsidence has been discovered in many areas of the state, causing billions of dollars of damage. Impacts from subsidence fall into the following categories:

- Loss of conveyance capacity in canals, streams and rivers, and flood bypass channels;
- Diminished effectiveness of levees;
- Damage to roads, bridges, building foundations, pipelines, and other surface and subsurface infrastructure; and
- Development of earth fissures, which can damage surface and subsurface structures and allow for contamination at the land surface to enter shallow aquifers.”¹⁹

16
Con't

Subsidence in Colusa, Yolo and Solano counties in the Sacramento Valley during the 1976-77 drought caused widespread well casing damages, which made some wells unusable.²⁰ A recent series of reports by the Stanford Woods Institute for the Environment and the Bill Lane Center for the American West at the Water in the West center at Stanford University describe the subsidence concerns regarding groundwater pumping in California, including the Sacramento Valley.²¹ Custis notes the types of infrastructure in the Sacramento Valley susceptible to damage from subsidence,

17

“There are a number of critical structures in the Sacramento Valley that may be susceptible to settlement and lateral movement. These include natural gas pipelines, gas transfer and storage facilities, gas wells, railroads bridges, water and sewer pipelines, water wells, canals, levees, other industrial facilities.”²²

In response to concerns over groundwater use and related issues, the California legislature recently passed, and Governor Brown signed into law, the Sustainable Groundwater Management Act (Act).²³ The Act will affect groundwater users including those supplying water transfers. The LTWT makes no mention of how the Act could affect the context within which water transfers would happen, or the transfers themselves. This is a significant omission.

18

¹⁹ Borchers, J. and M. Carpenter. 2014. *Land Subsidence from Groundwater Use in California*. Luhdorff & Scalmanini Consulting Engineers. Support provided by the California Water Foundation. April. Page ES-2.

²⁰ Borchers, J. and M. Carpenter. 2014. *Land Subsidence from Groundwater Use in California*. Luhdorff & Scalmanini Consulting Engineers. Support provided by the California Water Foundation. April. Page ES-3.

²¹ Water in the West. 2014. *Understanding California's Groundwater*. waterinthewest.stanford.edu.

²² Custis 2014, page 28.

²³ opr.ca.gov/s_groundwater.php.

Carriage Water Costs

The LTWT assumes that required carriage water component of water transfers from the Sacramento River will account for 20 percent of transferred water.

“Transfers from the Sacramento Rive assume a 20 percent carriage water adjustment to maintain Delta salinity.”²⁴

Recent data on the percentage of required carriage water are higher than the 20-percent assumption in the LTWT. For example, the DWR describes a recent carriage water percentage of 30.

“Another cost related to transferring water is carriage water. ... For the Sacramento River, this has generally been about 20 percent of the transfer water ... It is worth noting, however, that in 2012 and 2013 carriage water losses for the Sacramento River were as high as 30 percent of transfer water.”²⁵

To the extent that carriage water requirements exceed 20 percent, the LTWT overestimates the amount of water delivered south through the Bay Delta to water purchasers, and thus the economic benefits of these transfers.

Data and modeling ignore recent trends in water transfers

Using water data from 1970 through 2003, the LTWT estimates that future water transfers will happen on average 12 out of 33 years.²⁶ Twelve of 33 years is a transfer probability of approximately 36 percent. By ignoring water data for years after 2003, the analysis excludes relevant information on the more recent dry trend and current historical drought. For example, Table 1-3 on page 1-17 of the LTWT lists years and amounts of water transfers from 2000 through 2014. This data shows that water transfers happened in 9 of the previous 15 years, or a transfer probability of 60 percent, almost double that used in the LTWT. For years after 2003, transfers happened in eight out of 11 years, for a transfer percent of approximately 73.

Other sources of data on the frequency of water transfers do not support the LTWT's water-transfer results. For example, a report by the Western Canal Water District (WCWD) includes a table showing water transfers from the Sacramento Valley through the Bay Delta from 2001 through projected 2010. The information in this table shows transfers happening in eight out of ten years.²⁷ A similar report by WCWD in 2014

²⁴ LTWT page B-18.

²⁵ California Department of Water Resources. 2013. California Water Plan 2013 Update. Bulletin 160-13. Volume 3 Resource Management Strategies. Pages 8-9.

²⁶ LTWT, page 3.3-60 and -61.

²⁷ Western Canal Water District (WCWD). 2009. *Initial Study and Proposed Negative Declaration for Western Canal Water District 2010 Water Transfer Program*. Western Canal Water District, Richvale, California. January. Page 25.

included a table of water transfers for years 2006 through projected 2014. The data in that table shows transfers happening during seven of nine years.²⁸ Taken together, these two reports show water transfers from the Sacramento Valley south through the Bay Delta in 11 out of 14 years between 2001 through 2014. This works out to a transfer probability of approximately 79 percent.

20
Con't

These results demonstrate two important points. First, using a transfer probability of 36 percent greatly underestimates the actual years that transfers happened post-2003, the last year of data in the LTWT analysis. Underestimating transfers leads to underestimating the environmental and economic effects of the transfers.

Second, the data upon which conclusions in the LTWT rest do not depict actual conditions post-2003. That is, by relying on flawed or incomplete data, models that use this data produce flawed or biased results. The estimated transfer frequency (36 percent of years), does not match the recent actual transfer frequency (60, 73, or 79 percent, depending on the source and years included).

21

At an October 21st, 2014 public hearing in Chico, California on the LTWT, a consultant working with BOR on the LTWT commented on the water model and the 1970 through 2003 data upon which the model relies. In response to questions about why the model did not include data from the previous ten years, or why the period of analysis was not extended out to the current drought situation, the consultant replied that the modeling tools “are not up-to-date.”²⁹

According to resource agencies in California, variable, even extreme climate and rainfall conditions are the norm. Climate change is projected to make these trends worse and increase prediction uncertainties. The recent Bay Delta Conservation Plan describes this uncertainty,

22

“Variability and uncertainty are the dominant characteristics of California’s water resources.”³⁰

“Precipitation is the source of 97% of California’s water supply. It varies greatly from year to year, by season, and by where it falls geographically in the state.

²⁸ WCWD. 2014. *Initial Study and Proposed Negative Declaration for Western Canal Water District 2014 Water Transfer Program*. Western Canal Water District, Richvale, California. February. Page 25.

²⁹ Transcript of October 21, 2014 public hearing in Chico, California on the LTWT EIS/EIR; Hacking, H. 2014. “Sacramento Valley water transfer idea leaves locals fuming.” *ChicoER News*, October 22, 2014, <http://www.chicoer.com>.

³⁰ California Department of Water Resources (DWR). 2013. Bay Delta Conservation Plan. Public Draft. November Sacramento, CA. Prepared by ICF International (ICF 00343.12). Sacramento, CA. Page 5-1.

With climate change, the state's precipitation is expected to become even more unpredictable."³¹

"However, the total volume of water the state receives can vary dramatically between dry and wet years. California may receive less than 100 MAF of water during a dry year and more than 300 MAF in a wet year (Western Regional Climate Center 2011)."³²

"The geographic variation and the unpredictability in precipitation that California receives make it challenging to manage the available runoff that can be diverted or captured in storage to meet urban and agricultural water needs."³³

"Historically, precipitation in most of California has been dominated by extreme variability seasonally, annually, and over decade time scales; in the context of climate change, projections of future precipitation are even more uncertain than projections for temperature. Uncertainty regarding precipitation projections is greatest in the northern part of the state, and a stronger tendency toward drying is indicated in the southern part of the state."³⁴

Consultants working for the BOR admit that the water model and data upon which the LTWT analysis and conclusions rest are not up to date. We note above the model's unreliability and poor projection capabilities regarding water transfers post-2003. The DWR concludes that variability and extremes characterize the state's weather and rainfall conditions, and that climate change is increasing this variability and uncertainty. Taken together, these facts raise questions regarding the veracity of the projected water transfers described in the LTWT, and the estimated environmental and economic consequences of those transfers.

The analysis does not adequately take into account recent trends in agricultural production

Not included in the LTWT's description of current conditions are recent trends in agricultural production that affect groundwater use and conditions in the Sacramento Valley. For example, according to a recent report, approximately half the increase in irrigated acres in the Sacramento Valley since 2008 (approximately 200,000 acres), happened on lands not served by surface water suppliers. Irrigating these lands takes approximately 300,000 acre-feet (af) of groundwater per year.³⁵

³¹ DWR, 2013. Page 5-2.

³² DWR, 2013, page 5-2.

³³ DWR, 2013, page 5-2.

³⁴ DWR, 2013, page 5-2.

³⁵ DMW, 2014, page 7.

22
Con't

23

A related point is the lack of discussion or analysis in the LTWT of trends in prices for agricultural goods produced with surface and groundwater, trends in prices for water, and how these factors affect grower decisions. For example, the analysis fails to address the extent to which historically high prices for water (discussed below) increase groundwater mining and sale in the Sacramento Valley, and how this affects water transfers and their environmental and economic consequences.

24

Another agricultural trend not discussed in the LTWT, but which has implications for water transfers and their consequences, is the increasing use of pressurized irrigation methods in the Sacramento Valley. Pressurized irrigation reduces groundwater recharge by limiting water percolation. Some growers supply their pressurized irrigation systems using groundwater, even when they have access to surface water. According to the report commissioned by the NCWA,

25

“The increasing use of pressurized irrigation systems using groundwater is likely to be an increasingly important factor in the overall management of groundwater and surface water in the Sacramento Valley as a whole, particularly as such system displace the use of available surface water.”³⁶

In response to the recent trend in high prices for almonds, olives, walnuts and other tree crops, growers in the San Joaquin *and* Sacramento Valleys planted more acres of these trees and other permanent-type crops, and less acres of lower valued annual crops. Such a change increases and “hardens” demand for water in both valleys because growers no longer have the flexibility of idling these acres in response to drought.³⁷ Thus, one of the arguments in support of water transfers—that growers south of the Bay Delta planted increased acres of tree crops that have higher water demands—also affects growers and water use and demands north of the Bay Delta.

26

The LTWT is silent on these trends or how they would influence future water transfers from the Sacramento Valley.

³⁶ DMW, 2014, page 8.

³⁷ DMW, 2014, page 7.

3 The LTWT relies on outdated and incomplete data

In addition to the deficiencies described in previous sections, the analysis described in the LTWT relies on obsolete data for certain key variables. The analysis also ignored other relevant data and information. These shortcomings include the following.

The LTWT assumes a price for water that bears no resemblance to the current reality

The analysis described in the LTWT assumes a price of water of \$225 per af of water.³⁸ This amount drastically underestimates the current price for water. Dollar amounts for water trades are not readily available to the public. However, information on the current price of water from news articles and other sources reveals a range of current prices that exceed \$225 by a significant amount.

A report by Bloomberg News on the impacts of drought on water prices reports water prices of \$1,000 to \$2,000 per af. The article also quotes a spokesman for the BOR,

“The rising prices are ‘a function of supply and demand in a very dry year and the fact that there are a lot of competing uses for water in California,’ said Mat Maucieri, a spokesman for the Bureau of Reclamation.”³⁹

An article in the Sacramento Bee on water transfers noted that one buyer was paying “in the neighborhood of \$500 to \$600 an acre-foot.”⁴⁰ The Glenn-Colusa Irrigation District commenting on the LTWT noted that the \$225 per af price used in the analysis was the price paid for water over eight years ago.⁴¹

Water users, sellers and buyers would surely respond differently to a market price of water of \$1,000 to \$2,000 per af, than they would to a price of \$225. As such, the extent to which growers idle cropland, switch to less water intensive crops, and substitute groundwater for surface water in the LTWT likely does not reflect this difference. As we note below, missing from the LTWT analysis is an assessment of the economics of water markets, how sellers and buyers respond to changing water prices, and how this affects the type and amount of water transfers.

27

³⁸ LTWT, page 3.10-27.

³⁹ Vekshin, A. 2014. “California Water Prices Soar for Farmers as Drought Grows,” Bloomberg. July 24. <http://www.bloomberg.com>.

⁴⁰ Garza, M. 2014. “The Conversation: A controversial water transfer worth millions.” The Sacramento Bee. May 25. <http://www.sacbee.com/opinion/the-conversation/article99570.html>.

⁴¹ Glenn-Colusa Irrigation District. 2014. *Board of Directors Meeting of November 6, 2014, Item 6*.

Ignored impacts on tax revenues to local governments from IMPLAN results

The LTWT describes estimating impacts of water transfers on employment, labor income and total value of output using IMPLAN.⁴² IMPLAN is a commonly used software and data package that helps analysts estimate economic impacts of policy changes or compare economic impacts of allocation alternatives, e.g., alternative logging proposals or alternative water-transfer amounts. According to the IMPLAN website, IMPLAN "... allows an analyst to trace spending through an economy and measure the cumulative effects of that spending."⁴³ IMPLAN traces the economic benefits of increased spending as it works its way through an economy, or, when spending decreases, the negative economic impacts of decreased spending. From our own experience using IMPLAN, and from information on the IMPLAN website, in addition to the employment, labor income and total value of output reported in the LTWT, IMPLAN also quantifies the impacts of alternatives on *government finances and tax revenues*.⁴⁴ For example, the IMPLAN website describes how the software can estimate state, local, and federal tax amounts collected (or lost) as a result of a change in an economy, such as reduced agricultural activity.⁴⁵

28

Even though IMPLAN calculates impacts of alternatives on local government finances and tax revenues, the analysis described in the LTWT does not report these results. That is, the authors apparently choose not to report the output from IMPLAN on how the transfer alternatives would affect the dollar amounts of tax revenues to local governments as a result of the reduced agricultural activity and spending. Instead, the report notes that impacts "to local government finances, including tax revenues and costs, are described *qualitatively*." [emphasis added]⁴⁶ The report does not explain why the analysts chose to address impacts on local tax revenues of the water-transfer alternatives qualitatively, rather than rely on the estimates of tax impacts produced by IMPLAN.

Ignored own research results on stream flow depletion factors

The LTWT makes no mention of the results from studies of the impacts of groundwater pumping in support of water transfers on stream flow depletion. A technical memo on the impacts of groundwater pumping on stream flow depletion describes the analysis and concludes that,

29

⁴² LTWT, page 3.10-21.

⁴³ IMPLAN web site, implan.com/index.php?option=com_glossary&id=236&letter=E.

⁴⁴ IMPLAN. https://implan.com/index.php?option=com_content&view=article&id=532:532&catid=233:KB16.

⁴⁵ IMPLAN. https://implan.com/index.php?option=com_content&view=article&id=532:532&catid=233:KB16.

⁴⁶ LTWT, page 3.10-24.

"The effect of groundwater substitution transfer pumping on stream flow, when considered as a percent of the groundwater pumped for the program, is significant."⁴⁷

"The three scenarios presented here estimated effects of transfer pumping on stream flow when dry, normal, and wet conditions followed transfer pumping. Estimated stream flow losses in the five-year period following each scenario were 44, 39, and 19 percent of the amount of groundwater pumped during the four-month transfer period."⁴⁸

In spite of these results, information distributed by the DWR and BOR to those interested in making water transfers in 2014, cites a stream flow depletion factor of 12 percent.⁴⁹ It's not clear how BOR justifies using a 12-percent depletion factor when analyses conducted by their contractors found depletion factors of 44, 39 and 19 percent.

We understand that the same SACFEM model that produced other results in the LTWT also produced the stream flow depletion factors.⁵⁰ Yet, while the LTWT reports other results from SACFEM, it makes no mention of these results. It also ignores the assumed 12-percent depletion factor cited by DWR and BOR. Instead, it states that stream flow depletion will be studied at a later date.⁵¹ This approach ignores their own modeling results on stream flow depletion.

Incomplete and selective use of information from groundwater monitoring wells

The LTWT omits a significant concluding passage when describing results from a groundwater monitoring well in the Sacramento Valley.

For well 21N03W33A004M, the LTWT states,

"Water levels at well 21N03W33A004M generally declined during the 1970s and prior to import of surface water conveyed by the Tehama-Colusa Canal. During the 1980s, groundwater levels recovered due to import and use of surface water supply and because of the 1982 to 1984 wet water years [citation omitted]."⁵²

⁴⁷ Lawson, P. 2010. Technical Memorandum. Groundwater Substitution Transfer Impact Analysis, Sacramento Valley. CH2MHill. March 29. Page 8.

⁴⁸ Lawson, 2010, Page 8.

⁴⁹ DWR and BOR, 2014. Addendum to DRAFT Technical Information for Preparing Water Transfer Proposals. Information to Parties Interested in making Water Available for water Transfers in 2014. January. Page 33.

⁵⁰ LTWT, page 3.3-60.

⁵¹ LTWT, page 3.1-21.

⁵² LTWT, page 3.3-22.

The document cites a DWR report from 2014 on drought response and gaps in groundwater monitoring.⁵³ The description in the DWR report, however, includes this additional concluding passage that the LTWT authors excluded,

“Water levels declined again in the 2008 drought period, followed by a brief recovery during 2010 to 2011, and *then returning to 2008 levels (which are notably lower than the 1977-79 drought levels).*”⁵⁴ [emphasis added]

The omission matters as it completely changes the conclusion regarding current groundwater conditions as reported by the well.

The description in the LTWT of results from well 15N03W01N001M match those from the DWR source document. That description concludes,

“... After the 2008-2009 drought, water levels declined to historical lows. Water levels recovered quickly during 2010 and 2011, *then after returned to the trend of long-term decline.*”⁵⁵ [emphasis added]

Taken together these results indicate a long-term trend in declining groundwater levels in areas around the wells. The LTWT discounts or ignores these results instead favoring results from other wells. On this point, consulting hydrologist Custis describes other relevant data on groundwater monitoring,

“The Draft EIS/EIR doesn’t provide maps showing groundwater elevations, or depth to groundwater, for groundwater substitution transfer seller areas in Sutter, Yolo, Yuba, and Sacramento counties.

The DWR provides on a web site a number of additional groundwater level and depth to groundwater maps at: [website omitted].”⁵⁶

Custis notes other deficiencies of the groundwater monitoring as described in the LTWT.

“...[T]he Draft EIS/EIR provides only limited information on the wells to be used in the groundwater substitution transfers [citation omitted], and no information on the non-participating wells that may be impacted.”⁵⁷

Custis goes on to list other recommended groundwater monitoring information that the LTWT does not include.⁵⁸

⁵³ LTWT, page 3.3-22.

⁵⁴ DWR, 2014a, page 24.

⁵⁵ LTWT, page 3.3-22.

⁵⁶ Custis 2014, pages 9-10.

⁵⁷ Custis 2014, page 2.

A related point is the available monitoring data from past water transfers. DWR and BOR apparently already collect information on the impacts of groundwater pumping in support of water transfers on groundwater levels.⁵⁹ The LTWT makes no mention of this data or how it could help inform the analysis of impacts of water transfers at issue in the LTWT on groundwater levels and related concerns. It would seem that BOR has available data relevant to its analysis described in the LTWT but makes no use of this data. On this point Custis notes,

31

“The BoR should already have monitoring and mitigation plans and evaluation reports based on the requirements of the DTIPWTP for past groundwater substitution transfers, which likely were undertaken by some of the same sellers as the proposed 10-year transfer project.”⁶⁰

The analysis relies on outdated prices for agricultural commodities

The analysis described in the LTWT uses outdated prices for agricultural commodities to estimate the volume and value of water transfers. The analysis relies on prices for rice, processing tomatoes, corn and alfalfa from 2006 through 2010.⁶¹ The analysis compares the price of water, which as we note above bears no resemblance to current prices, with prices for agricultural commodities to estimate cases in which selling water is more profitable than producing crops. Using outdated commodity prices compounds the error of using water prices that greatly underestimate actual prices. The combined effect is misleading results and conclusions regarding the degree of participation by growers in the water transfer program.

32

No mention of how prices for water and agricultural commodities could impact the affected environment, water transfers and their environmental and economic consequences

The water transfers at issue in the LTWT would not happen in an economic vacuum. Growers and water sellers and buyers react to changing price and market conditions. The LTWT, however, is silent on these forces and how they would influence water transfers.

33

The analysis depicted in the LTWT assumes a static water price of \$225 per af and prices for agricultural commodities as they existed in 2006 through 2010.⁶² Such a static analysis

⁵⁸ Custis 2014, page 2.

⁵⁹ See for example, DWR and BOR, 2014. *DRAFT Technical Information for Preparing Water Transfer Proposals. Information to Parties Interested in making Water Available for water Transfers in 2014*. January; DWR and BOR. 2013. *DRAFT Technical Information for Preparing Water Transfer Proposals. Information to Parties Interested in Making Water Available for Water Transfers in 2014*. October.

⁶⁰ Custis 2014, page 24.

⁶¹ LTWT, page 3.10-27, -28.

⁶² LTWT, page 3.10-27.

provides a single estimate, or a snapshot view, of estimated water transfers. A more informative and useful analysis would have described how changing water and commodity prices influence the conclusions re the number and volumes of water transfers. Such a sensitivity analysis would allow readers to better compare current or expected future prices with prices in the analysis to see how these conditions affect results.

33
con't

The LTWT is also silent on likely transaction costs and how they influence water transfers. Water transactions, particularly out-of-basin and cross-Delta, would require a diverse and substantial set of transaction costs that are not quantitatively included in the analysis. Omitting these transaction costs either overestimates the benefit potential to buyers and sellers of these transactions, or implies that these transaction costs will be borne by the public. Communication, information, and contracting costs have long inhibited water markets in California, and while mechanisms for overcoming these challenges have improved, they do have real costs, particularly across diverse regions and incorporating farmers using differing operations.⁶³ Transaction costs are hurdles to transactions, functionally a third party that must be satisfied before the buyer and seller can find opportunities to both be made better off by the transaction. For example, if a seller is willing to sell water at \$250 per af, and a buyer is willing to pay \$300 per af, if there are \$60 per af in transaction costs, the transaction cannot efficiently take place.

34

Cross-Delta transaction would also impose a number of costs on the Delta conveyance system. Pumping costs at Banks and Jones Pumping Plants should be incorporated into transaction costs. Transactions could also affect congestion and overall capacity for these plants and the SWP and CVP systems overall. Energy, management, staffing, delays, and other costs and impositions could arise that would either require compensation by the buyers and sellers, or externalities on other parties.

Permitting, liability, and long-term protection of water rights all contribute to additional concerns for buyers and sellers that functionally generate additional forms of transaction costs. If these are incorporated into willingness-to-pay for buyers and willingness-to-accept for sellers, the transactions become less desirable. Alternatively, if these costs are borne by public agencies, as with the variety of other transaction costs mentioned above and referenced qualitatively throughout the LTWT, the burden for taxpayers could be substantial. These public contributions require demonstration of benefits to the public as a whole. The LTWT does not demonstrate benefits to portions of the public that are not party to transactions. On this point Custis notes,

“Because the spatial limits of groundwater substitution pumping impacts are controlled by hydrogeology, hydrology, and rates, durations and seasons of pumping, the impacts may not be limited to the boundaries of each seller’s service area, GMPs [groundwater

⁶³ Haddad, B. M. 2000. *Rivers of Gold: Designing Markets to Allocate Water in California*. Island Press.

management plan], or County. There is a possibility that a seller's groundwater substitution area of impact will occur in multiple local jurisdictions, which should results [sic] in project requirements coming from multiple local as well as state and federal agencies. The Draft EIS/EIR doesn't discuss which of the multiple local agencies would be the lead agency, how an agreement between agencies would be reached, or how the requirements of the other agencies will be enforced."⁶⁴

34
con't

Overall, the estimates of benefits and costs of transactions, as well as identification of efficient transactions, do not include the diverse and substantial set of transaction costs that cross-Delta transfers would require. Therefore the analysis either overestimates the benefits of the LTWT, or hides public costs to manage and overcome these transaction costs.

⁶⁴ Custis 2014, page 9.

4 The LTWT underestimates negative impacts on the regional economy in the sellers area

In this section we describe our comments on the analysis of regional economic effects in the LTWT.

Underestimates economic effects on regional economy in sellers area

In the sections above, we describe omissions and errors regarding the estimated number and volumes of water transfers. Some of these errors could lead to underestimating the number and volume of water transfers, some could have the opposite effect. In this subsection we focus on additional examples of how the LTWT likely underestimates the number and volume of water transfers that will happen in the future. By underestimating the water transfers the LTWT also underestimates the negative impacts of the transfers on the regional economy in the sellers area.

The negative economic effects listed in the LTWT include:

- Approximately 500 lost jobs in Glenn, Colusa, Yolo, Sutter, Butte and Solano counties.
- Over \$20 million in lost labor income and over \$61 million in lost economic output in these same counties.
- Unquantified but increased pumping costs for water users in areas where groundwater levels decline.
- Unquantified but negative affects on other local economic effects.
- Unquantified but negative affects on tenant farmers.⁶⁵

The LTWT analysis of some regional economic effects assumes non-consecutive years of water transfers. If water transfers happen in consecutive years, impacts would be greater than reported in the LTWT.

“Local effects would be more adverse if cropland idling transfers occurred in consecutive years. Business owners would likely be able to recover from reduced sales in a single year, but it would be more difficult if sales remained low for multiple years.”⁶⁶

As shown in LTWT Table 1-3 on page 1-17, from 2004 through 2014, there have been eight water-transfer years out of 11, and 5 cases of consecutive transfer years. Given these recent

⁶⁵ LTWT, page 3.10-45 and -46.

⁶⁶ LTWT, page 3.10-33.

conditions, it is likely that consecutive years of water transfers will happen more frequently than assumed in the LTWT.

35
con't

Incomplete description of impacts on pumping costs

The LTWT reports that farmers in the Sacramento and San Joaquin Valleys pay water-pumping costs of approximately \$0.32 per af.⁶⁷ The LTWT analysis estimates that as a result of groundwater-substitution transfers, pumping costs for “many growers” would increase by \$0.32 to \$1.60 per af.⁶⁸ This represents a non-trivial increase of 100 to 500 percent. In some cases, cost increases could be \$6.40 to \$8.00 per af.⁶⁹ Expressed on a percentage basis these amounts are increases of 2,000 to 2,500 percent. The LTWT describes these increases in pumping costs as “adverse.” The analysis, however, does not report a total estimated increase in pumping costs or describe the increase as a percentage of current costs, either of which would have helped the reader better understand the significance of the increase.⁷⁰ A related point is that the analysis of pumping costs in the LTWT relies on results from the water modeling, the deficiencies of which we describe above and elsewhere in this report.

36

It’s also not clear from the description of the analysis if the “adverse” effects on pumping costs apply only to those participating in water transfers, or also affect third parties that will not benefit from the transfers.

No mention of costs of deepening or installing new wells

The LTWT makes no mention of increased costs of deepening or installing new wells as a result of the impacts of groundwater pumping on groundwater levels. As we note above in section 2 under the description of current groundwater conditions, the CASGEM groundwater basin prioritization study lists 23 basins in the Sacramento Valley ranked “high” or “medium” dependent on groundwater. These basins support private residential wells, public water supply wells, and irrigation wells.⁷¹ Recent news reports describe the intensity of well drilling operations in California’s Central Valley.⁷² To the extent that groundwater pumping in support of water transfers lowers groundwater levels, some

37

⁶⁷ LTWT, page 3.10-24.

⁶⁸ LTWT, page 3.10-36.

⁶⁹ LTWT, page 3.10-36.

⁷⁰ A related point is that Figures 3.10-5 and 3.10-6 are confusing in that the captions include “September 1990” and “September 1976,” respectively. The discussion on page 3.10-36, which introduces the figures, makes no mention of these dates or their significance.

⁷¹ DWR, 2014b, pages 2-5.

⁷² Howard, B.C. 2014. California drought spurs groundwater drilling boom in Central Valley. National Geographic. August 15. <http://news.nationalgeographic.com/news.2014/08/140815-central-valley-california-drilling-boom-groundwater-drought-wells/>; Khokha, S. 2014. Drought has drillers running after shrinking California water supply. National Public Radio. June 30. <http://www.npr.org/2014/06/30/325494399/drought-has-drillers-running-after-shrinking-california-water-supply>.

current water users depending on groundwater may face increased costs of deepening or installing new wells. The analysis described in the LTWT does not address these costs.

37
con't

Underestimates the significance of impacts on unemployment rates

Any negative impacts of water transfers on agricultural production and related unemployment effects, would take place against a backdrop of already hurting economies. As Figure 3.10-7 illustrates, current unemployment rates in the seller counties runs between approximately 8 and 18 percent. The LTWT analysis estimates that water transfers will idle approximately 500 workers in the Sacramento Valley. The analysis assumes that impacts of transfers on unemployment would be temporary.

38

“Reductions in employment associated with cropland idling transfers would contribute to unemployment in the region. However, cropland idling effects are temporary and under the Proposed Action, cropland idling transfers would not occur each year over the 10-year period.”⁷³

As we note above, however, data on the frequency of recent water transfers do not support the LTWT assumptions regarding infrequent future water-transfer years. Thus, the LTWT analysis likely underestimated the negative impacts of the plan on unemployment in the Sacramento Valley.

No mention of economic harm to local economies from lost water-based recreational activities

The analysis of regional economic effects in the LTWT focuses on impacts of water transfers on agricultural production and related businesses. The LTWT ignores other negative impacts on the regional economy. For example, the LTWT is silent on the impacts of water transfers on reservoirs such as Lake Oroville and others in the sellers area, and the related impacts on the region’s water-based recreational economy. In their letter commenting on the LTWT, the Butte County Board of Supervisors noted their concerns that the LTWT “... failed to take into account the reduction in stream flows and the lowering of Lake Oroville that will harm the local economy.”⁷⁴ In an earlier letter to Governor Brown commenting on the BDCP, the Butte County Board of Supervisors noted the importance of the lake to the region’s economy, and the fact that the State of California has not fulfilled commitments made regarding developments at Lake Oroville.⁷⁵ Ignoring the potential impacts of water transfers on Lake Oroville and the associated economic impacts compounds the negative effects of the State’s failure to fulfill past commitments at the lake.

39

⁷³ LTWT, page 3.10-49.

⁷⁴ Teeter, D. 2014. *Letter to Brad Hubbard, BOR, and Frances Mizuno, SLDMWA*, November 25. Re: Long-Term Water transfers Program Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR). Page 2.

⁷⁵ Lambert, S. 2012. *Letter to The Honorable Edmund G. Brrown, Jr.* August 14. Re: Butte County’s Opposition to the Bay Delta Conservation Plan (BDCP). August 14. Page 2.

Arbitrary limits on crop idling

The analysis in the LTWT relies on arbitrary limits on crop idling as a means of avoiding negative economic impacts. The DWR and BOR document that provides technical guidance for those interested in making water transfers describes the possibility of negative economic effects of crop idling, however, the guidelines for the amount of idling that would cause economic harm appear arbitrary. The relevant passage from the document states,

“Cropland idling/crop shifting transfers have the potential to affect the local economy. Parties that depend on farming-related activities can experience decreases in business if land idling becomes extensive. Limiting cropland idling to 20 percent of the total irrigable land in a county *should* limit economic effects.”⁷⁶ [emphasis added]

While the statement may be true, it lacks the analytical rigor that would satisfy NEPA requirements for, “Rigorous exploration and objective evaluation of all reasonable alternatives, ...”⁷⁷ As such, the guidelines on crop idling seem arbitrary rather than the result of rigorous and objective analysis.

Table 3.10-22 lists the total number of acres affected by cropland idling in the analysis described in the LTWT. As shown in this table, approximately 60,000 acres could be idled in Glenn, Colusa, Yolo, Sutter, and Butte counties.⁷⁸ In the table below, we show the total number of acres of irrigable land in each county, and 20 percent of these acres. According to the guidelines noted above, up to 257,000 acres could be idled in these counties without significant economic effects. This seems doubtful. Rather than relying on arbitrary rules of thumb and assumed limited economic effects of idling, a more complete and transparent assessment of the economic effects of water transfers would take an analytical and quantified approach.

Table 1: Acres of Cropland, by County, 2011.

County	Acres of Cropland	20 Percent of Acres
Butte	224,592	47,969
Colusa	291,435	56,246
Glenn	250,493	50,099
Sutter	239,846	58,287
Yolo	281,228	44,918
Total	1,287,594	257,519

Source: US Department of Agriculture. 2011. California Cropland Data Layer. National Agricultural Statistics Service. Research and Development Division, Geospatial Information Branch, Spatial Analysis Research Section.

⁷⁶ DWR and BOR, 2013. *DRAFT Technical Information for Preparing Water Transfer Proposals. Information to Parties Interested in Making Water Available for Water Transfers in 2014*. October. Page 22.

⁷⁷ LTWT page 2-1.

⁷⁸ LTWT, page 3.10-26.

5 The LTWT finds significant negative effects but the vague and incomplete proposed monitoring and mitigation plans would not address these effects

The LTWT concludes that water transfers will have some significantly negative impacts on groundwater resources. As we note in earlier sections of this report, the analysis described in the LTWT likely underestimates the negative effects of water transfers. For example, the analysis likely underestimates the frequency of water-transfer years, and so the negative effects of the transfers. The analysis also ignores negative impacts on water-based recreational activities and the associated negative economic consequences. The monitoring and mitigation plans focus only on the negative effects listed in the LTWT. Thus, they would address only a subset of the likely total negative economic consequences of the water transfers. In addition, the vague and incomplete proposed monitoring and mitigation plans would not adequately address those negative effects listed in the LTWT. Concerns regarding these plans include the following.

42

The LTWT ignored the costs of monitoring and mitigation

The LTWT proposes both a monitoring and mitigation program for significant negative impacts of water transfers on groundwater resources. Implementing these programs would take planning, effort and financial resources. The LTWT, however, does not include these costs in their analysis of alternatives. For example, water sellers would be required to monitor and record groundwater conditions and coordinate with regulators regarding the impacts of their groundwater pumping on groundwater levels. Water seller will incur costs monitoring, measuring, recording, and reporting the necessary information. The LTWT excludes these and related costs from the analysis.

43

Likewise, the mitigation of negative groundwater consequences would also require time, effort, and costs to water sellers, third parties negatively affected by groundwater pumping, and regulators. LTWT excludes these costs as well.

The monitoring and mitigation programs include inherent conflicts of interests

The monitoring program as described in the LTWT is vague and depends on sellers implementing the program. This conflict of interest pits financial gain from water sales against complete and impartial monitoring efforts. This opens the door to lax, biased, or incomplete monitoring, which could lead to negative environmental and economic consequences for third parties not part of the water transfers.

44

The monitoring program includes provisions for a coordination plan that would share information among “well operators and other decision makers.”⁷⁹ Such confidential results would keep other stakeholders in the dark regarding the impacts of water transfers. Given the fact that multiple wells belonging to multiple property owners can access the same groundwater aquifer, and that groundwater pumping can affect flows of surface water, such a confidential program seems counter to the wellbeing of the regional economy in the sellers area. An open monitoring program with public results would better communicate the potential environmental and economic risks of groundwater pumping in support of water transfers.

44
con't

If the seller’s monitoring program finds that water sales are causing “substantial adverse impacts”⁸⁰ the seller will be responsible for implementing a mitigation program. The conflict of interest is obvious.

One method of avoiding the obvious conflicts of interests is requiring monitoring by independent third parties not involved with or affected by groundwater pumping in support of water transfers. Such monitoring could be detailed, transparent and public, which would alleviate concerns over the risks and consequences of negative environmental and economic effects of groundwater pumping. Mitigation decisions and requirements should likewise be detailed, transparent and public for the same reasons.

Insufficient monitoring period

As described in the LTWT, groundwater levels would be monitored through March of the year following a transfer. It’s not clear that this limited monitoring period is sufficiently long enough to track potential impacts on groundwater of water transfers. For example, the report cited above for the NCWA states,

“...[G]roundwater changes can take many years to become apparent, and we have not yet been able to measure with certainty the long-term impacts of the current level of groundwater use as it affects our measures of sustainability.”⁸¹

45

An insufficient monitoring period could underestimate the impacts of groundwater pumping on groundwater levels and impacts on stream flow depletions. Lowering groundwater level and increasing stream flow depletions would generate negative environmental and economic impacts. The monitoring period in the LTWT may cause analysts to underestimate the environmental and economic effects of the water-transfers alternatives.

⁷⁹ LTWT, page 3.3-89.

⁸⁰ LTWT, page 3.3-90.

⁸¹ DMW, 2014, page 10.

Insufficient monitoring for land subsidence

The monitoring program includes monitoring subsidence, however, the program is vague on monitoring requirements and what amount of subsidence would trigger a halt in water transfers. Custis describes a number of technical deficiencies in the proposed mitigation plan.

“The Draft EIS/EIR should be able to provide the specific thresholds of subsidence that will trigger the need for additional extensometer monitoring, continuous GPS monitoring, or extensive land-elevation benchmark surveys by a licensed surveyor as required by GW-1. The Draft EIS/EIR should also specify in mitigation measure GW-1, the frequency and methods of collecting and reporting subsidence measurements, and discuss how the non-participating landowners and the public can obtain this information in a timely manner. In addition, the Draft EIS/EIR should provide a discussion of the thresholds that will trigger implementation of the reimbursement mitigation measure required by GW-1 for repair or modifications to infrastructure damaged by non-reversible subsidence, and the procedures for seeking monetary recovery from subsidence damage [citation omitted].”

“Specific ‘strategic’ subsidence monitoring locations should be given in mitigation measure GW-1 based on analysis of the susceptible infrastructure locations and the potential subsidence areas.”⁸²

Implementing the Custis recommendations will take time and financial resources for water sellers, local jurisdictions and third parties negatively affected by groundwater pumping. The LTWT does not include the costs of these measures in the analysis. Thus, the costs of the water transfers described in the LTWT underestimate the true costs of the program.

Vague significance criteria

The mitigation program includes a number of vague descriptions of critical components. Relevant missing descriptions include details on:

- How regulators and stakeholders would define “substantial adverse impacts” from groundwater pumping.
- What constitutes a “significant” increase in pumping costs suffered by injured third parties.
- Required modifications to damaged third-party infrastructure or the installation of new infrastructure.

⁸² Custis 2014, page 28.

- The procedure that injured third parties would use when making claims against a seller.
- The procedure that regulators and stakeholders would use when investigating third-party claims.
- What constitutes “legitimate significant effects” on third parties.⁸³

47
con't

A vague and ill-defined mitigation program increases risks of environmental and economic harm, and shifts the costs of such harm from water sellers to third parties and society in general. The analysis described in the LTWT does not identify, describe or quantify these risks, costs and consequences. A related point is that the LTWT makes no mention of BOR addressing these or similar issues as part of reviewing past annual water transfers. Including such information from past water transfers—if BOR considered these effects—in the LTWT could help illustrate or describe the uncertainties listed above.

The mitigation plan puts costs on to injured third parties

Injured third parties bear the costs of bringing to the sellers’ attention harm caused by groundwater pumping. Also, the LTWT states that proposed mitigation options would be developed “in cooperation”⁸⁴ with injured third parties. This approach places costs on injured third parties rather than on sellers. That is, those who would not benefit financially from the program bear the costs of bringing negative impacts to the sellers’ attention. They also would incur costs of documenting and presenting their damages in the context of an ill-defined mitigation program. This raises equity concerns that those suffering costs of the program bear the additional costs of identifying, describing and calling attention to their costs. The analysis described in the LTWT further assumes that disagreements regarding third-party damages would be settled cooperatively, without presenting evidence substantiating such an optimistic assumption. The LTWT is silent on the economic consequences of sellers and injured third parties not cooperatively agreeing on harm and compensation.

48

As we note above, information the BOR collected from past water transfers may help inform the types and amounts of costs that injured third parties could incur as a result of the water transfers at issue in the LTWT.

BOR's role in monitoring and mitigation

The LTWT describes a substantive role for BOR in the monitoring and mitigation program, without specifics of how BOR would implement its responsibilities. Topic not addressed include:

49

⁸³ LTWT, page 3.3-88 through -91.

⁸⁴ LTWT, page 3.3-91.

- The costs to BOR of monitoring and mitigation.
- The details of interactions between sellers, injured third parties, and BOR staff regarding the details of monitoring and mitigation.
- The details of collecting, organizing and publishing relevant details of monitoring and mitigation.
- The details of decision making processes that affect monitoring and mitigation.
- The details of interactions between BOR and other federal or state agencies, and BOR and local jurisdictions.

49
Con't

Lead CEQA agency

SLDMWA is the lead state agency regarding CEQA compliance. It is also one of three potential buyers for the transferred water.⁸⁵ This arrangement creates a conflict of interest in that the lead CEQA agency also has a self interest in facilitating the water transfers. As described on their website, SLDMWA delivers approximately 3 million af of water to member agencies.⁸⁶ SLDMWA has a financial and operational interest in delivering water to its members. Thus, SLDMWA is not an impartial agent.

50

The LTWT provides no information on why SLDMWA is the lead state agency and not the California Department of Water Resources.

⁸⁵ LTWT EIS/EIR, Table 1-2, page 1-5. The other two buyers are Contra Costa Water District and the East Bay Municipal Utility District.

⁸⁶ SLDMWA web site, www.sldmwa.org/learn-more/about-us/.

6 The LTWT ignores the economic costs of environmental externalities and subsidies that water transfers support

51

The LTWT lists Westlands Water District as one of the CVP contractors expressing interest in purchasing transfer water.⁸⁷ The environmental externalities caused by agricultural production in Westlands are well documented, as are the economic subsidies that support this production. To the extent that the water transfers at issue in the LTWT facilitate agricultural production in Westlands, they also contribute to the environmental externalities and economic subsidies of that production. The LTWT is silent on these environmental and economic consequences of the water transfers.

In this section we summarize recent information on the environmental externalities and economic subsidies of agricultural production on Westlands that water transfers would support.

The environmental and economic externalities of Westlands have a long history

52

For decades, high levels of selenium have posed a serious environmental threat to drinking water, soil quality, and agriculture in the Westlands Water District.⁸⁸ This naturally occurring element leaches into soil and drinking water when irrigation water is applied and when significant levels accumulate, has been known to cause deformities and death in wildlife and human beings.⁸⁹ The most extreme example of this type of degradation occurred from 1981-1986 during the Kesterson Disaster, when the federally operated San Luis Unit diverted selenium-rich wastewater into the Kesterson National Wildlife Refuge, killing over one thousand birds and causing severe birth defects.⁹⁰

⁸⁷ LTWT, page 1-5.

⁸⁸ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>

⁸⁹ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>

⁹⁰ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>; Environmental Working Group. 2010b, September 28. U.S. Taxpayers Paid nearly \$60 million to Farmers on Westlands Toxic Lands. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>; Luoma, Samuel N. and Teresa S. Presser. (2000). Forecasting Selenium Discharges to the San Francisco Bay-Delta Estuary: Ecological Effects of a Proposed San Luis Drain Extension. U.S. Geological Survey. (Open-File Report 00-416). Menlo Park, California.

Current environmental concerns

Since the Kesterson Disaster, the Westlands has followed a “no-discharge policy” where irrigated wastewater is reused on agricultural land or stored in groundwater aquifers.⁹¹ In spite of the well-documented concerns regarding selenium contaminated runoff from Westlands, as yet there is no official monitoring of selenium levels in the district.⁹² The San Luis Act (1960) gives the BOR, not the Westlands Water District, responsibility for disposing of Westland Water,⁹³ but as of yet neither entity has implemented any meaningful solution. This failure prompted the Westlands District to bring a lawsuit against the BOR in 1995, which was finally brought to the Ninth Circuit Court of Appeals in 2000.⁹⁴ The court upheld a lower court’s decision to force the BOR to provide drainage to the district but allowed that solutions other than a drain might be considered.⁹⁵

At first, it seemed that large-scale retirement of farmland was the solution favored by both the Westlands and the federal government.⁹⁶ In 2001, the District released a fact sheet entitled “Why Land Retirement Makes Sense for the Westlands Water District” advocating for a possible deal with the federal government that would retire up to 200,000 acres of agricultural land. According to the federal government’s National Economic Development analysis, this option would result in an economic gain of \$3.6 million per year excluding any additional savings as a result of reduced crop subsidies.⁹⁷ Instead, after more than a decade of negotiations, the federal

⁹¹ State of California. Centerl Valley Regional Water Quality Control Board. Irrigated Lands Program – Development of the Long-term Program. http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_land/new_waste_discharge_requirements/western_tulare_lake_basin_area_wdrs/index.shtml#octdec2013.

⁹² State of California. Centerl Valley Regional Water Quality Control Board. Irrigated Lands Program – Development of the Long-term Program. http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_land/new_waste_discharge_requirements/western_tulare_lake_basin_area_wdrs/index.shtml#octdec2013.

⁹³ US Bureau of Reclamation. 2012a, August 7. *CVP Ratebooks - Irrigation*, 2012. Retrieved from <http://www.usbr.gov/mp/cvpwaterrates/ratebooks/irrigation/2012/index.html>; U.S. Bureau of Reclamation. 2012b, September. San Luis Unit Drainage, Central Valley Project. *Reclamation: Managing Water in the West*. Retrieved from http://www.usbr.gov/mp/PA/docs/fact_sheets/San_Luis_Drainage.pdf.

⁹⁴ US Bureau of Reclamation. 2012a, August 7. *CVP Ratebooks - Irrigation*, 2012. Retrieved from <http://www.usbr.gov/mp/cvpwaterrates/ratebooks/irrigation/2012/index.html>; U.S. Bureau of Reclamation. 2012b, September. San Luis Unit Drainage, Central Valley Project. *Reclamation: Managing Water in the West*. Retrieved from http://www.usbr.gov/mp/PA/docs/fact_sheets/San_Luis_Drainage.pdf.

⁹⁵ US Bureau of Reclamation. 2012a, August 7. *CVP Ratebooks - Irrigation*, 2012. Retrieved from <http://www.usbr.gov/mp/cvpwaterrates/ratebooks/irrigation/2012/index.html>; U.S. Bureau of Reclamation. 2012b, September. San Luis Unit Drainage, Central Valley Project. *Reclamation: Managing Water in the West*. Retrieved from http://www.usbr.gov/mp/PA/docs/fact_sheets/San_Luis_Drainage.pdf.

⁹⁶ Westlands Water District. 2001, October 16. Why Land Retirement Makes Sense for Westlands Water District. *Westlands Water District*.

⁹⁷ Westlands Water District. 2001, October 16. Why Land Retirement Makes Sense for Westlands Water District. *Westlands Water District*; Sharp, Renée. 2010, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/agmag/2010/10/throwing-good-money-after-bad-lands>.

government and the Westlands Water District finally signed an agreement in 2014 which lifts the federal government's obligation to provide drainage to the district, forgives the nearly \$400 million the district owes to the federal government for its part in the construction of the Central Valley Project (CVP), assures the district almost 900,000 acre-feet of water per year from the CVP, and requires only 100,000 acres of land be retired.⁹⁸ This leaves over 100,000 more acres of selenium-degraded land that the Westlands Water District will now need to decide how to drain in the years to come.⁹⁹ In addition, while the BOR's Environmental Assessment found that there would be no significant environmental impact as a result of the interim renewal contracts with the Westlands and other CVP districts, several environmental groups have criticized the study as violating federal environmental requirements, including the National Environmental Policy Act of 1969.¹⁰⁰

53
Con't

Economic subsidies to the Westlands water district

As the largest water district in California and the largest recipient of water under the Central Valley Project, the Westlands Water District receives significant crop, water, and power subsidies to supplement its agricultural activities. According to a report by the Environmental Working Group, between 2005 and 2009, the federal government issued almost \$55 million of counter cyclical and direct crop subsidies to 356 individuals in the district.¹⁰¹ The district's 350 farms networks are entitled to over 1.1 million acre-feet of water per year, more than twice the allocation of the City of Los Angeles.¹⁰² In 2002, the group estimated that the federal

54

⁹⁸ California Water Impact Network. 2014, October 16. Obama Selling Out California to Westlands Water District. *California Water Impact Network*. Retrieved from <http://www.c-win.org/content/media-release-obama-selling-out-california-westlands-water-district-secret-deal-forgives-gov/>; US Department of the Interior. 2013, December 6. *PRINCIPLES OF AGREEMENT FOR A PROPOSED SETTLEMENT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT REGARDING DRAINAGE*. Retrieved from www.c-win.org/webfm_send/453; Boxall, Bettina. 2014, October 21. Amid California's drought, a bruising battle for cheap water. *Los Angeles Times*. Retrieved from <http://www.latimes.com/local/california/la-me-westlands-20141021-story.html#page=2>.

⁹⁹ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>.

¹⁰⁰ US Bureau of Reclamation. 2013, December 7. *Central Valley Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2014-2016*. (FONSI-13-023). Sacramento, CA; Minton, Jonas, Kathryn Phillips, et al. 2014, January 14. The Environmental Assessment [EA] for Westlands Water District et. al. Central Valley Project Interim 6 Contract Renewals for Approximately 1.2 MAF of water [Letter to Rain Emerson, Bureau of Reclamation].

¹⁰¹ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>; Environmental Working Group. 2010b, September 28. U.S. Taxpayers Paid nearly \$60 million to Farmers on Westlands Toxic Lands. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>.

¹⁰² Boxall, Bettina. 2014, October 21. Amid California's drought, a bruising battle for cheap water. *Los Angeles Times*. Retrieved from <http://www.latimes.com/local/california/la-me-westlands-20141021-story.html#page=2>; Environmental Working Group. 2005, September 14. Soaking Uncle Sam: Why Westlands Water District's New Contract is All Wet. *Environmental Working Group*. Retrieved from <http://www.ewg.org/research/soaking-uncle-sam>.

government paid \$110 million per year in water subsidies, making its water drastically less expensive than that allocated to urban households.¹⁰³

In 2002, the Westlands Water District received more than \$70 million in power subsidies. Although the Westlands receives 25% of all water from the CVP, it consumes 60% of the electricity required to deliver water to all districts and 60% of all government granted power subsidies to the CVP.¹⁰⁴

As mentioned above, the federal government has subsidized the Central Valley Project since its construction. While farmers were meant to pay \$1 billion of the \$3.6 billion project cost fifty years after its completion, it's estimated that by 2008, only 20% of that debt had been repaid.¹⁰⁵

54
con't

¹⁰³ Boxall, Bettina. 2014, October 21. Amid California's drought, a bruising battle for cheap water. *Los Angeles Times*. Retrieved from <http://www.latimes.com/local/california/la-me-westlands-20141021-story.html#page=2>; Environmental Working Group. 2005, September 14. Soaking Uncle Sam: Why Westlands Water District's New Contract is All Wet. *Environmental Working Group*. Retrieved from <http://www.ewg.org/research/soaking-uncle-sam>; Environmental Working Group. 2007, May 30. Power Drain: The Biggest Winner: Westlands. *Environmental Working Group*. Retrieved from <http://www.ewg.org/research/power-drain/biggest-winner-westlands>.

¹⁰⁴ Environmental Working Group. 2007, May 30. Power Drain: The Biggest Winner: Westlands. *Environmental Working Group*. Retrieved from <http://www.ewg.org/research/power-drain/biggest-winner-westlands>.

¹⁰⁵ Environmental Working Group. 2010a, September 28. Throwing Good Money at Bad Land. *Environmental Working Group*. Retrieved from <http://www.ewg.org/Throwing-Good-Money-at-Bad-Land>.

7 The LTWT underestimates the cumulative effects of water transfers

Cumulative effects analyses under NEPA and CEQA are intended to identify impacts that materialize or are compounded when the proposed action is implemented at the same time as or in conjunction with other actions. In Chapters 3 and 4, the LTWT addresses cumulative effects for each resource area and provides a global description of the methods and actions considered for analysis in each resource area. Section 3.10 provides a cursory discussion of potential cumulative effects for the regional economy, but ignores the full range of possible cumulative outcomes associated with the proposed action.

According to NEPA and CEQA requirements, cumulative effects analysis must examine the possibility of effects occurring across several dimensions. When multiple projects produce effects within the same geographic and temporal range, they may:

- Expand or contract the set of possible impacts.
- Increase or decrease the likelihood of specific potential impacts.
- Accelerate or decelerate the timing of specific potential impacts.
- Change the trajectory of potential impacts.
- Increase or decrease the economic importance of specific potential impacts.
- Shift the distribution of uncertainty or risk borne by different groups.

Cumulative effects may arise as multiple projects interact in a linear fashion, resulting in impacts that are additive. Interactions might also be non-linear, either offsetting each other to be less than additive, or exacerbating each other to be greater than additive.

The LTWT does not adequately consider cumulative effects within this framework, so misses important interactions that could result in significant impacts beyond those identified for the project alone.

One of the greatest potential sources of cumulative impacts is non-CVP water transfers. Although transfers under the SWP were considered, the possibility of other transfers occurring was not. Additional transfers would have similar impacts in the sellers' region, and may also lead to net effects that exceed sustainable thresholds and have a larger impact than each would individually. For example, the analysis

- Ignores cumulative effects of additional water transfers on water prices, and fails to examine the effects of price on the decisions and behaviors of farmers in the context of other water transfers.
- Ignores effects resulting from additional water transfers that have the potential to influence agricultural prices, and how those agricultural prices influence decisions about water transfers.

- Treats effects as “temporary” and thus not significant, and thereby fails to adequately account for potential thresholds in the local agricultural economy where short-term effects would become long-term effects.
- Assumes mitigation for groundwater effects of the proposed action would make farmers whole, so fails to properly account for potential threshold effects in groundwater resources, and associated costs to farmers.
- Ignores the possibility that increased uncertainty related to groundwater levels, agricultural market conditions, etc. from the proposed action, in conjunction with other actions, would adversely affect farmers.
- Ignores the cumulative effects of additional water transfers on environmental resources and conditions including aquatic, riparian, terrestrial and avian species and habitats.

55
con't

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS



December 1, 2014

Mr. Brad Hubbard
United States Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825
bhubbard@usbr.gov

Ms. Frances Mizuno
San Luis & Delta Mendota Water Authority
842 6th Street
Los Banos, CA 93635
frances.mizuno@sldmwa.org

Subject: Comments on the *Draft Environmental Impact Statement/Environmental Impact Report Long Term North-to-South 2015-2024 Water Transfer Program*

Dear Mr. Hubbard and Ms. Mizuno:

AquAlliance, California Sportfishing Protection Alliance (“CSPA”), and Aqua Terra Aeris submit the following comments and questions for the Bureau of Reclamation (“Bureau”) and the San Luis Delta Mendota Water Authority’s (“SLDMWA”) (“Lead Agencies”) *Draft Environmental Impact Statement (“EIS”)* and *Environmental Impact Report (“EIR”)* (“EIS/EIR”), for the 2015-2024 *Long Term North-to-South Water Transfer Program* (“Project” or “2015-2024 Water Transfer Program”).

AquAlliance exists to sustain and defend northern California waters. We have participated in past water transfer processes, commented on past transfer documents, and sued the Bureau twice in the last five years. In doing so we seek to protect the Sacramento River’s watershed in order to sustain family farms and communities, enhance Delta water quality, protect creeks and rivers, native flora and fauna, vernal pools and recreational opportunities, and to participate in planning locally and regionally for the watershed’s long-term future. The *2015-2024 Water Transfer Program* is seriously deficient and should be withdrawn. If the Bureau and DWR are determined to pursue water transfers from the Sacramento Valley, AquAlliance requests that the agencies regroup and prepare an adequate programmatic EIS/EIR.

This letter relies significantly on, references, and incorporates by reference as though fully stated herein, for which we expressly request that a response to each comment contained therein be provided, the following comments submitted on behalf of AquAlliance:

- Custis, Kit H., 2014. Comments and recommendations on U.S. Bureau of Reclamation and San Luis & Delta-Mendota Water Authority Draft Long-Term Water Transfer DRAFT EIS/EIR, Prepared for AquAlliance. (“Custis,” Exhibit A)
- ECONorthwest, 2014. Critique of Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report Public Draft, Prepared for AquAlliance. (“EcoNorthwest,” Exhibit B)
- Mish, Kyran D., 2014. Comments for AquAlliance on Long-Term Water Transfers Draft EIR/EIS. (“Mish,” Exhibit C)
- Cannon, Tom, Comments on Long Term Transfers EIR/EIS, Review of Effects on Special Status Fish. Prepared for California Sportfishing Protection Association. (“Cannon,” Exhibit D)

1
con't

In addition, we renew the following comments previously submitted, attached hereto, as fully bearing upon the presently proposed project and request:

- *2009 Drought Water Bank* (“DWB”). (Exhibit F)
- *2010-2011 Water Transfer Program*. (Exhibit G)
- *2013 Water Transfer Program*. (Exhibit G)
- *2014 Water Transfer Program*. (Exhibit G)
- C-WIN, CSPA, AquAlliance Comments and Attachments for the Bay Delta Conservation Plan’s EIS/EIR. (Exhibit H)
- AquAlliance’s comments on the Bay Delta Conservation Plan’s EIS/EIR. (Exhibit H)
- CSPA’s comments on the Bay Delta Conservation Plan’s EIS/EIR. (Exhibit H)

I. The EIS/EIR Contains an Inadequate Project Description.

A “finite project description is indispensable to an informative, legally adequate EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192. CEQA defines a “project” to include “the whole of an action” that may result in adverse environmental change. CEQA Guidelines § 15378. A project may not be split into component parts each subject to separate environmental review. *See, e.g., Orinda Ass’n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428. Without a complete and accurate description of the project and all of its components, an accurate environmental analysis is not possible. *See, e.g., Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450; *Blue Mountains Biodiversity Project v. United States Forest Service*, 161 F.3d 1208, 1215 (9th Cir. 2008).

2

As discussed, below, and in the expert reports submitted by *Custis*, *EcoNorthwest*, *Cannon*, and *Mish* on behalf of AquAlliance, the EIS/EIR fails to comport with these standards.

2
con't

a. The Project / Proposed Action Alternative Description Lacks Detail Necessary for Full Environmental Analysis.

- i. Actual transfer buyers, sellers, modes, amounts, criteria, market demands, availability, and timing, are undisclosed.

The Proposed Action Alternative is poorly specified and needs additional clarity before decision-makers and the public can understand its human and environmental consequences. The Lead Agencies tacitly admit that they have no idea how many acre-feet of water may be made available, by what mechanism the water may be made available (fallowing, groundwater substitution, or crop changes), or to what ultimate use (public health, urban, agricultural) the water may be put.

Glenn Colusa Irrigation District is listed as the largest potential seller, but its General Manager, Thad Bettner, asserted publicly on October 7, 2014 that the district hadn't committed to the 91,000 AF found in Table ES-2 (Potential Sellers). GCID subsequently sent the Bureau a letter that states that GCID plans to pursue its own Groundwater Supplemental Supply Program and that, "It is important for Reclamation to understand that GCID has not approved the operation of any District facilities attributed to the LTWTP Action/Project that is presented in the draft EIR/EIS." ¹ The letters continues stating that, "It is important to underscore that GCID would prioritize pumping during dry and critically dry water years for use in the Groundwater Supplemental Supply Program, and thus wells used under that program would not otherwise be available for the USBR's LTWTP." First, these public and written comments contradict the EIS/EIR on page 3.8-37 where it states that, "The availability of supplies in the seller service area was determined based on data provided by the potential sellers." Second, the largest potential seller in the *2015-2024 Water Transfer Program* is seemingly unable or unwilling to participate in the groundwater substitution component during dry and critically dry years. In addition, GCID has stated that "it will not participate in a groundwater substitution transfer, and for land idling reduce the acreage from 20,000 acres to no more than 10,000 acres." ² Similarly, the Sacramento Suburban Water District received \$2 million from the Governor's Water Action Plan to move groundwater to member agencies that have been "[h]eavily dependent on Folsom reservoir," according to John Woodling of the Sacramento Regional Water Authority. ³ Woodling continues that, "During these dry times, the groundwater basin really is our insurance

3

¹ GCID October 14, 2014.

² GCID November 6, 2014 Board Meeting Item #6.

³ Ortiz, Edward 2014. *Region's water districts split \$14 million for drought relief*. Sacramento Bee November 7, 2014.

policy,” (*Id*). Knowing that smart water managers are very aware of this fact, why would Sacramento Suburban Water District turn around and propose to sell 30,000 AF of water to the out-of-region buyers through groundwater substitution transfers during the Project’s “[d]ry and critically dry years”? In short, the EIS/EIR has no way of knowing what transfers may occur, and when.

3
con't

It is also not possible to determine with confidence just how much water is requested by potential urban and agricultural buyers and how firm the requests are. What are SLDMWA’s specific requests for agricultural or urban uses of Project water? What are the SLDMWA’s present agricultural water demands for the 850,000 acres that it serves? Left to guess at the possible requests for water, we look at the 2009 DWB where there were between 400,000 and 500,000 AF of presumably urban buyer requests alone (which had priority over agricultural purchases, according to the 2009 DWB priorities) and a cumulative total of less than 400,000 AF from willing sellers. It is highly possible, based on the example during the 2009 DWB, that many buyers are not likely to have their needs addressed by the *2015-2024 Water Transfer Program*. How would this affect the project objectives and purpose? How would this affect variable circumstances for other proposed transfers?

4

The EIS/EIR also fails to address the ability and willingness of potential buyers to pay for Project water given the supplies that may be available. Complaints from agricultural water districts were registered in the comments on the Draft Environmental Water Account EIS/EIR and reported in the Final EIS/EIR in January 2004 indicating that they could not compete on price with urban areas buying water from the EWA. Given the absence of priority criteria, will agricultural water buyers identified in Table ES-1 have the ability to buy water when competing with urban districts? Moreover, since buyers are not disclosed in the EIS/EIR for non-CVP river water, these further effects on water market conditions and competition between agricultural and urban sectors is impossible to evaluate. Who are the buyers that may request non-CVP river water, and what are their maximum requests? That DWR is not the CEQA lead agency further complicates the evaluation of competition for water in the EIS/EIR.

Nor does the *2015-2024 Water Transfer Program* prevent rice growers (or other farmers) from “double-dipping,” but actually encourages it. Districts and their growers have opted to turn back their surface supplies from the CVP and the State Water Project and substitute groundwater to cultivate their rice crop—thereby receiving premiums on both their CVP contract surface water as well as their rice crop each fall when it goes to market. There appear to be no caps on water sale prices to prevent windfall profits to sellers of Sacramento Valley water — especially for crops with high market prices, such as rice.

5

The EIS/EIR is inadequate because it fails to identify and analyze the market context for crops as well as water that would ultimately influence the size and scope of the *2015-2024 Water*

*Transfer Program.*⁴ The Project's sellers and buyers are highly sensitive to the influences of prices—prices for water as well as crops such as rice, orchard and vineyard commodities, and other field crops. It is plausible that crop idling would occur more in field crops, while groundwater substitution would be more likely for orchard and vineyard crops. However, high prices for rice—the Sacramento Valley's largest field crop—undermines this logic and leads to substantial groundwater substitution. These potential issues and impacts should be recognized in the EIS/EIR because crop prices are key factors in choices potential water sellers would weigh in deciding whether to idle crops, substitute groundwater, or decline to participate in the Project altogether.

5
con't

To enable a more complete and discrete project description, the EIS/EIR should propose criteria other than price alone to manage allocation of state water resources. The EIS/EIR should consider some priority criteria as was included in the 2009 Drought Water Bank EA/FONSI (p. 3-88). Do both authorizing agencies, the Bureau and DWR, lack criteria to prioritize water transfers? Are transfers approved on a first-come first-serve basis, as generated by market conditions alone? What is the legal or policy basis to act without providing priority criteria? A lack of criteria fails to encourage regions to develop their own water supplies more efficiently and cost-effectively without damage to resources of other regions. If criteria will be applied, these need to be disclosed and analyzed in the EIS/EIR.

Additional uncertainty caused by the incomplete project description includes:

- How many of the proposed transfers would be one year in duration, multi-year, or permanent. How will the duration of any agreement be determined? The duration of a transfer agreement will have dramatic effects on the water market as well as the environmental impact analysis.
- The EIS/EIR purports to be a 10 year project, but is there an actual sunset date, since it continues serially in multiple years? Could any transfer be approved in the next 10 years that would extend beyond 2024?
- The proposed program provides no way to know what ultimate use transferred water will be put to; nor does the EIS/EIR provide any way to know what activities may occur on idled cropland. The EIS/EIR assumptions on these points are inherently incomplete and fail to support any discrete environmental analysis.

6

In sum, the proposed program provides no way to know which transfers may or may not occur, individually or cumulatively. The lack of a stable and finite project description undermines the entire EIS/EIR. As discussed further, below, description of the environmental setting, evaluation of potentially significant impacts, and formulation of mitigation measures, among other issues, all are rendered unduly imprecise, deferred, and incomplete, subject to the theoretical transfers taking shape at some, unknown, future time.

⁴ EcoNorthwest (Exhibit B).

ii. Historic transfer data is excluded.

Absent from the DEIS/EIR are any of the required monitoring reports from previous transfer projects. *See, e.g., Citizens for East Shore Parks v. State Lands Commission* (2010) 48 Cal.App.4th 549; *Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.App.4th 310. Without the required monitoring reports, the public is left in the dark regarding this new proposal to sell up to 600,000 AF annually over a 10 year period. No information is provided regarding the impacts to downstream users, wells near production wells, the Sacramento River and its tributaries, refuges, water quality, special status species and the San Francisco Bay Delta Estuary from past CVP transfers or cumulatively including non-CVP water transfers in the area of origin. For example, groundwater substitution transfers and transfers that result in reduced flows in combination with below normal water years are known to have to have the potential for significant impacts on water quality, fish, wildlife and the flows in the Sacramento River and its tributaries. Providing all such documentation of the terms, conditions, effects, and outcomes of prior transfers is integral to understanding the proposed Project.

7

b. The Proposed Project is in Fact a Proposed Program.

The lack of any stable, discrete, project description, at best, renders the proposed project a “program,” rather than any specific project itself. “[A] *program* EIR is distinct from a *project* EIR, which is prepared for a specific project and must examine in detail site-specific considerations.” *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1184. As discussed further, below, this EIS/EIR does not and cannot complete site-specific and project-specific analysis of unknown transfers at unknown times. Buyers and sellers have “expressed interest,” but no specific transfers or combination of transfers are proposed, and we don’t know which may be proposed or ultimately approved.

8

Put differently, the EIS/EIR project description is not simply inadequate: the EIS/EIR fails to propose or approve any project at all. Instead, the EIS/EIR should be recharacterized and revised as a program EIS/EIR. Indeed, agency documents have referred to this program, as such, for years. (E.g., Federal Register /Vol. 75, No. 248 /Tuesday, December 28, 2010 /Notices *Long-Term North to South Water Transfer Program, Sacramento County, CA*; Final EA/FONSI for 2010-2011 Water Transfer Program.⁵) And other external sources also support the proposition that this EIS/EIR does not and cannot review and approve specific transfers:

“Each transfer is unique and must be evaluated individually to determine the quantity and timing of real water made available.” (BDCP DEIR at 1E-2.)

“Although this document seeks to identify in the best and most complete way possible the information needed for transfer approval, to both expedite that approval and to

⁵ <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=31781>

reduce participant uncertainty, each transfer is unique and must be considered on its individual factual merits, using all the information that is available at the time of transfer approval and execution of the conveyance or letter of agreement with the respective Project Agency in accordance with the applicable legal requirements. This document does not pre-determine those needs or those facts and does not foreclose the requirement and consideration of additional information.” (Draft Technical Information for Preparing Water Transfer Proposals (“DTIPWTP”) 2014.)

8
con't

Indeed, the Bureau and DWR have known for over a decade that programmatic environmental review was and is necessary for water transfers from the Sacramento Valley. The following examples highlight the Bureau and DWR’s deficiencies in complying with NEPA and CEQA.

- a. The Sacramento Valley Water Management Agreement was signed in 2002, and the need for a programmatic EIS/EIR was clear at that time it was initiated but never completed.
- b. In 2000, the Governor’s Advisory Drought Planning Panel report, *Critical Water Shortage Contingency Plan* promised a program EIR on a drought-response water transfer program, but was never undertaken.
- c. Sacramento Valley Integrated Regional Water Management Plan (2006).
- d. The Sacramento Valley Water Management Plan (2007).
- e. The CVPIA mandates the Bureau contribute to the State of California’s *long-term* efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, among other things. (EIS/EIR 1-10.)

9

Accordingly, the EIS/EIR should be revised to state that it does not and cannot constitute sufficient environmental review of any particular, as-of-yet-unknown, water transfer proposal; and instead be revised, restructured, and recirculated to provide programmatic policies, criteria, and first-tier environmental review.

- c. The EIS/EIR Improperly Segments Environmental Review of the Whole of this Program.

As discussed throughout these comments, the proposed Project does not exist in a vacuum, but rather is another transfer program in a series of many that have been termed either “temporary,” “short term,” “emergency,” or “one-time” water transfers, and is cumulative to numerous broad programs or plans to develop regional groundwater resources and a conjunctive use system. The *2015-2024 Water Transfer Program* is also only one of several proposed and existing projects that affect the regional aquifers.

10

For example, the proposed Project is, in fact, just one project piece required to implement the Sacramento Valley Water Management Agreement (“SVWMA”). The Bureau has publically

stated the need to prepare programmatic environmental review for the SVWMA for over a decade, and the present EIS/EIR covers a significant portion of the program agreed to under the SVWMA. In 2003, the Bureau published an NOI/NOP for a “Short-term Sacramento Valley Water Management Program EIS/EIR.” (68 Federal Register 46218 (Aug 5, 2003).) As summarized on the Bureau’s current website:

The Short-term phase of the SVWM Program resolves water quality and water rights issues arising from the need to meet the flow-related water quality objectives of the 1995 Bay-Delta Water Quality Control Plan and the State Water Resources Control Board's Phase 8 Water Rights Hearing process, and would promote better water management in the Sacramento Valley and develop additional water supplies through a cooperative water management partnership. Program participants include Reclamation, DWR, Northern California Water Association, San Luis & Delta-Mendota Water Authority, some Sacramento Valley water users, and Central Valley Project and State Water Project contractors. SVWM Program actions would be locally-proposed projects and actions that include the development of groundwater to substitute for surface water supplies, conjunctive use of groundwater and surface water, refurbish existing groundwater extraction wells, install groundwater monitoring stations, install new groundwater extraction wells, reservoir re-operation, system improvements such as canal lining, tailwater recovery, and improved operations, or surface and groundwater planning studies. These short-term projects and actions would be implemented for a period of 10 years in areas of Shasta, Butte, Sutter, Glenn, Tehama, Colusa, Sacramento, Placer, and Yolo counties.⁶

10
Con't

The resounding parallels between the SVWMA NOI/NOP and the presently proposed project are not merely coincidence: they are a piece of the same program. In fact, the SVWMA continues to require the Bureau and SLDMWA to facilitate water transfers through crop idling or groundwater substitution:

Management Tools for this Agreement. A key to accomplishing the goals of this Agreement will be the identification and implementation of a “palette” of voluntary water management measures (including cost and yield data) that could be implemented to develop increased water supply, reliability, and operational flexibility. Some of the measures that may be included in the palette are:

...

(v) Transfers and exchanges among Upstream Water Users and with the CVP and SWP water contractors, either for water from specific reservoirs, or by substituting groundwater for surface water . . . ⁷

⁶ http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=788

⁷ http://www.norcalwater.org/wp-content/uploads/2010/12/sac_valley_water_mgmt_agrmt_new.pdf

It is abundantly clear that the Bureau and SLDMWA are proposing a program through the present draft EIS/EIR to implement this management tool, as required by the SVWMA. But neither CEQA nor NEPA permit this approach of segmenting and piecemealing review of the whole of a project down to its component parts. The water transfers proposed for this project will directly advance SVWMA implementation, and the Bureau and DWR must complete environmental review of the whole of the program, as first proposed in 2003 but since abandoned. For example, the draft EIS/EIR does not reveal that the current Project is part of a much larger set of plans to develop groundwater in the region, to develop a "conjunctive" system for the region, and to integrate northern California's groundwater into the state's water supply.

11

In this vein the U.S. Department of Interior, 2006. Grant Assistance Agreement, *Stony Creek Fan Conjunctive Water Management Program and Regional Integration of the lower Tuscan Groundwater formation* laid bare the intentions of the Bureau and its largest Sacramento Valley water district partner, Glenn Colusa Irrigation District, to take over the Tuscan groundwater basin to further the implementation of the SVWMA, stating:

GCID shall define three hypothetical water delivery systems from the State Water Project (Oroville), the Central Valley Project (Shasta) and the Orland Project reservoirs sufficient to provide full and reliable surface water delivery to parties now pumping from the Lower Tuscan Formation. The purpose of this activity is to describe and compare the performance of three alternative ways of furnishing a substitute surface water supply to the current Lower Tuscan Formation groundwater users to eliminate the risks to them of more aggressive pumping from the Formation and to optimize conjunctive management of the Sacramento Valley water resources.

d. The Project Description Contains an Inadequate Statement of Objectives, Purpose, and Need.

The lack of a stable project description/proposed alternative, as discussed, above, further obfuscates the need for the Project. Further, without programmatic criteria to prioritize certain transfers, the public is not provided with even a basic understanding of the need for the Project. The importance of this section in a NEPA document can't be overstated. "It establishes why the agency is proposing to spend large amounts of taxpayers' money while at the same time causing significant environmental impacts... As importantly, the project purpose and need drives the process for alternatives consideration, in-depth analysis, and ultimate selection. The Council on Environmental Quality (CEQ) regulations require that the EIS address the "no-action" alternative and "rigorously explore and objectively evaluate all reasonable alternatives." Furthermore, a well-justified purpose and need is vital to meeting the requirements of Section 4(f) (49 U.S.C. 303) and the Executive Orders on Wetlands (E.O. 11990) and Floodplains (E.O. 11988) and the Section 404(b)(1) Guidelines. Without a well-defined, well-established and well-

12

justified purpose and need, it will be difficult to determine which alternatives are reasonable, prudent and practicable, and it may be impossible to dismiss the no-build alternative”⁸

With the importance of a Purpose and Need statement revealed above, the Project’s version for purposes of NEPA states that, “The purpose of the Proposed Action is to facilitate and approve voluntary water transfers from willing sellers upstream of the Delta to water users south of the Delta and in the San Francisco Bay Area. Water users have the need for immediately implementable and flexible supplemental water supplies to alleviate shortages,” (p. 1-2). Noticeably missing from this section of the EIS/EIR is a statement about the Bureau’s purpose and need, not the buyers’ purpose and need. The omission of *any* need on the Bureau’s part for this Project highlights the conflicts in the Bureau’s mission, deficiencies in planning for both the short and long term, and the inadequacy of the EIS/EIR that should provide the public with the basis for the development of the range of reasonable alternatives and the identification and eventual selection of a preferred alternative. The *Reclamation’s NEPA Handbook* (2012) stresses that, “The need for an accurate (and adequate) purpose and need statement early in the NEPA process cannot be overstated. This statement gives direction to the entire process and ensures alternatives are designed to address project goals.” (p.11-1)

12
con't

For purposes of CEQA, the Project Objectives (p. 1-2) go on to state that,

SLDMWA has developed the following objectives for long-term water transfers through 2024:

- Develop supplemental water supply for member agencies during times of CVP shortages to meet existing demands.
- Meet the need of member agencies for a water supply that is immediately implementable and flexible and can respond to changes in hydrologic conditions and CVP allocations.

Because shortages are expected due to hydrologic conditions, climatic variability, and regulatory requirements, transfers are needed to meet water demands.

But merely asserting that there are “demands” from their member lacks context, specificity, and rigor. It also fails to mention the need of the non-member buying agencies involved in the Project.

Some context for the policy failures that lead to the stated need for the Project must be presented. First, the hydrologic conditions described on pages ES-1, 1-1, and 1-2 almost always

13

⁸ Federal Transportation and Highway Administration, 1990. *NEPA and Transportation Decisionmaking: The Importance of Purpose and Need in Environmental Documents*.
<http://www.environment.fhwa.dot.gov/projdev/tdmneed.asp>

apply to the entire state, including the region where sellers are sought, not just the areas served by SLDMWA and non-member buyers as presented here. Second, SLDMWA has chronic water shortages due to its contractors' junior position in water rights, risks taken by growers to plant permanent crops, and serious long-term overdraft in its service area. Where is this divulged? Third, SLDMWA or its member agencies have sought to buy and actually procured water in many past water years to make up for poor planning and risky business decisions, which violates CEQA's prohibition against segmenting a project to evade proper environmental review.⁹ The habitual nature of the transfers is acknowledged on pages ES-1 and 1-1 stating, "In the past decades, water entities have been implementing water transfers to supplement available water supplies to serve existing demands, and such transfers have become a common tool in water resource planning." (See Table 1 for an attempt at documenting transfers since actual numbers are not disclosed in the EIS/EIR).

13
Con't

The Bureau and DWR's facilitation of so-called "temporary" annual transfers in 12 of the last 14 years is illustrated in Table 1 (2014 transfer totals have not been tallied to date).

Table 1. The table is based on one from Western Canal Water District's Negative Declaration for a 2010 water transfer.

Past Water Transfers from the Sacramento Valley Through the Delta in TAF Annually*													
Water Year Type **	Dry	Dry	AN	BN	BN	Wet	Dry	Critical	Dry	BN	Wet	BN	Dry
Program	2001	2002	2003	2004	2005	2006	2007	2008 ¹⁰	2009	2010	2011	2012	2013
DWR Drought Water Bank/Dry Year Programs	138	22	11	0.5	0	0	0	0	74	0	0	0	0
Enviro Water Acct	80	145	70	120	5	0	147	60	60	60	0	60	60
Others (CVP, SWP, Yuba, inter alia)	160	5	125	0	0	0	0	173	140	243	0	190	210
Totals	378	172	206	120.5	5	0	147	233	274* **	303	0	250	270

*Table reflects gross AF purchased prior to 20% Delta carriage loss (i.e., actual amounts pumped at Delta are 20% less)

** Based on DWR's measured unimpaired runoff (in million acre-feet)

Abbreviations: AN - Above normal year type and BN - Below normal year type (<http://cdec.water.ca.gov/cgi-progs/iodir/wsahist>)

*** The 2015-2024 Water Transfer Program's EIS/EIR contradicts the 274,000 AF total for 2009 on EIS/EIR page 1-16 that states that the CVP portion alone during 2009 was 390,000 AF.

14

The Project has become an extension of the so-called "temporary" annual transfers based on the demands of junior water rights holders who expect to receive little contract water during dry years. The low priority of their junior water service contracts within the Central Valley Project leaves their imported surface supplies in question year-to-year. It is the normal and appropriate function of California's system of water rights law that makes it so. Yet the efforts

⁹ Laurel Heights Improvement Association v. Regents of the University of California, 1988, 47 Cal.3d 376

¹⁰ The Environmental Water Account ended in 2007 (Bay Delta Conservation Plan Draft EIS/EIR 2013). The figures that continue in this row are based on a long-term contract with the Yuba County Water Agency to sell water.-

of the Bureau and DWR to oversee, approve, and facilitate water sales from the Sacramento, Feather, and Yuba rivers with fallowing and groundwater substitution are only intended to benefit the few western San Joaquin Valley farmers whose contractual surface water rights have always been less reliable than most—and whose lands are the most problematic for irrigation. These growers have chosen to harden demand by planting permanent crops, a very questionable business decision, but the Bureau fails to explain why this “tail” in water rights is wagging the dog.

14
Con't

e. The Project Description does Not Include all Project Components.

i. Carriage water.

The EIS/EIR’s description of and reliance on “carriage water” is completely uncertain, undefined, and provides no meaningful information to the public. The EIS/EIR states that “Outflows would generally increase during the transfer period because carriage water would become additional Delta outflow.” (EIS/EIR 3.2-39.) The EIS/EIR also asserts that, “Carriage water (a portion of the transfer that is not diverted in the Delta and becomes Delta outflow) will be used to maintain water quality in the Delta.” (EIS/EIR 2-29.) Elsewhere the EIS/EIR references 20% carriage losses for CCWD and SLDMWA in the EIS/EIR (3.2-39, 3.2-57-58, and B-6), while prior documents have used higher estimates:

Historically, approximately 20-30% of the water transferred through the Delta would be necessary to enable the maintenance of water quality standards, which are based largely upon the total amount of water moving through the Bay-Delta system. This water, which is not available for delivery to Buyers, is known as “carriage water.” Given historically dry conditions prevailing in 2014, DWR estimates that carriage losses could be higher.

15

(Biggs West Gridley 2014 Water Transfer Neg Dec, p. 4)(Exhibit I). A Bureau spreadsheet that documents the final transfer numbers for 2013 clearly demonstrates that the 30% figure was used for carriage losses.¹¹ The spreadsheet further reveals that there are additional water deductions that were made prior to delivery in 2013 for DWR Conveyance Loss (2%) and Warren Act Conveyance Loss (3%). When all the water deductions are tallied for stream depletion, carriage losses, and the two conveyance losses, the actual water available for delivery when groundwater substitution is used is 53%. This is not presented in the EIS/EIR, which allows the Lead Agencies to overestimate the amount of water that is delivered through the Delta to Buyers and therefore the economic benefits of the *2015-2024 Water Transfer Program*. What is lacking is any meaningful discussion of the need for, role, availability, and effect of carriage water and conveyance losses in any transfer in the EIS/EIR. Without such information it is not possible to determine the water quality and supply effects of the program.

¹¹ Bureau of Reclamation, 2013-12-17 2013 Total Pumpage (FINAL) nlw.xlsx (Exhibit J)

ii. Monitoring and production wells.

The identity and locations of all wells that will be used to monitor groundwater substitution transfer pumping impacts are unknown. The EIS/EIR must include proposed transfer well locations that are sufficiently accurate to allow for determination of distances between the wells and areas of potential impact. These are integral project features that must be disclosed in detail prior to any meaningful effects analysis.

16

In 2009, GCID installed four production wells to extract 26,530 AF of groundwater as part of its *Stony Creek Fan Aquifer Performance Testing Plan*. Other districts have also installed production wells, most with public funds, that have been used for past transfers such as Anderson/Cottonwood Irrigation District, Butte Water District, and RD-108. To the extent those wells and any others would be used in this project, they must be considered to be part of the whole of the action, and disclosed and analyzed herein.

i. "Other" transfers.

The EIS/EIR states that, "Other transfers not included in this EIS/EIR could occur during the same time period, subject to their own environmental review (as necessary)." (EIS/EIR 1-2.) In other words, not only is the EIS/EIR unclear precisely about which transfers are likely to occur and are analyzed in this EIR/EIR, it also leaves open-ended the prospect of some transfers not being covered by the EIS/EIR. This apparent piecemealing of transfer projects short-circuits comprehensive environmental review.

17

f. The Project Description Fails to Include Sufficient Locations, Maps, and Boundaries.

The project description must show the location of the project, its component parts, and the affected environmental features. CEQA Guidelines § 15124(a).

Maps are needed of each seller service area at a scale that allows for reasonably accurate measurement of distances between the groundwater substitution transfer wells and surface water features, other non-participating wells, proposed monitoring wells, fisheries, vegetation and wildlife areas, critical surface structures, and regional economic features. Maps with rates and times of stream depletion by longitudinal channel section are needed to allow for an adequate review of the Draft EIR/EIS conclusion of less than significant and reasonable impacts with no injury. These maps are also needed to evaluate the specific locations for monitoring potential impacts. Thus, detailed maps that show the locations of the monitoring wells and the areas of potential impact along with the rates and seasons of anticipated stream depletion are needed for each seller service area. These maps are also needed to allow for evaluation of the cumulative effects whenever pumping by multiple sellers can impact the same resource. The only maps provided by the Draft EIS/EIR that show the location of the groundwater substitution transfer wells, and the rivers and streams potentially impacted are the simulated drawdown Figures 3.3-26 to 3.3-31, which are at a scale of approximately 1 inch to 18 miles. The lack of maps with sufficient detail to see the relationship between the wells and the surface water

18

features prevents adequate review of the Draft EIS/EIR analysis to determine groundwater and surface water impacts.

18
Con't

Furthermore, figure 3.1-1, mapping the project area, is impossible to read and determine where each seller and buyer service area actually lies. Nor does the figure itself actually include many geographic points of reference used throughout the EIS/EIR. The EIS/EIR, for example, states that "Pelger MCW is located on the east side of the Sacramento River near Robbins (Figure 3.1-1.)" (EIS/EIR at 3.1-7.) But Robbins is not on the map, and the Pelger MCW is virtually impossible to locate on Figure 3.1-1. Similarly, the EIS/EIR states that the Sacramento River is impaired from Keswick dam to the Delta, but the EIS/EIR contains no description or map showing where Keswick dam is located, or any map enabling an understanding of the geographic scope of this water quality impairment. This problem repeats for literally dozens of existing environmental features described in the EIS/EIR. And, this problem is compounded by the unstable nature of the project description itself, leaving the EIS/EIR to string together multiple combinations of place names where transfers may or may not be imported or exported, and leaving the reader to continually search out secondary information to attempt to follow the EIS/EIR's terse and convoluted descriptions. A clear explanation, with visual aids, of the affected environment, including all local creeks and streams, and transfer water routes, is necessary to enable any member of the general public to grasp the potential types and locations of environmental impacts caused by the proposed program.

19

II. The EIS/EIR State Lead Agency Should be DWR, Not SLDMWA.

SLDMWA is not the proper Lead Agency for the Project. California Environmental Quality Act ("CEQA") Guidelines sections 15367 and 15051 require that the California Department of Water Resources ("DWR"), as the operator of the California Aqueduct and who has responsibility to protect the public health and safety and the financial security of bondholders with respect to the aqueduct, is the more appropriate lead agency. In *PCL v DWR*, the court found that DWR's attempt to delegate lead agency authority impermissibly insulated the department from "public awareness and possible reaction to the individual members' environmental and economic values."¹²

20
con't

Pursuant to CEQA, "'lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Public Res. Code § 21067.) As such, the lead agency must have authority to require imposition of alternatives and mitigation measures to reduce or avoid significant project effects, and must have the authority to disapprove of the project altogether. Here, the DWR clearly fits this description. As the EIS/EIR states, "[t]hese transfers require approval from Reclamation and/or Department of Water Resources (DWR)." (EIS/EIR 1-2.) Additionally, the

¹² *Planning and Conservation League et al. v Department of Water Resources* (2000) 83 Cal.App.4th 892, 907, citing *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770, 779.

EIS/EIR reveals the obvious and long-standing relationship between the Bureau and DWR in facilitating surface water transfers. The Bureau and DWR have collaborated on each DTIWT publication, which provides specific environmental considerations for transfer proposals; are said to have “sponsored drought-related programs” together; have created the joint EIS/EIR for the Environmental Water Account (“EWA”); and “cooperatively implemented the 2009 Drought Water Bank.”

SLDMWA should not serve as the lead agency. The *2015-2024 Water Transfer Program* has the potential to impact the long-term water supplies, environment, and economies in many California counties far removed from the SLDMWA geographic boundaries. With SLDMWA designated as the lead agency, and no potential sellers or source counties designated as responsible agencies, the process is unreasonably biased toward the narrow functional interests of SLDMWA and its member agencies. According to the EIS/EIR, the SLDMWA’s role is to “[h]elp negotiate transfers in years when the member agencies could experience shortages.” (EIS/EIR 1-1.) Helping to negotiate a transfer is a wholly different role than that of a lead agency with approval authority over a project. All of SLDMWA’s purposes and powers are centered on providing benefit to member organizations,¹³ and do not implement the Sustainable Groundwater Management Act.¹⁴ Not only would SLDMWA be advocating on behalf of its members in this process, but nothing provided in the EIS/EIR suggests that it has authority to require mitigation measures or alternatives to reduce or avoid significant project impacts, for example, to groundwater resources in the seller service area, as such limitations would clearly be contrary to the specific interests of the SLDMWA members.

Importantly, DWR not only has jurisdiction over the SLDMWA transfers in ways that SLDMWA does not, but also DWR has review and approval authority over potential transfers outside of the SLDMWA altogether, including, for example, the East Bay Municipal Utilities District, as well as “[o]ther transfers not included in this EIS/EIR [that] could occur during the same time period, subject to their own environmental review (as necessary).” (EIS/EIR 1-2.) Environmental review of transfers should be unified and comprehensive, and cumulative across both geography and over time in a way that DWR and not SLDMWA can provide.

III. The EIS/EIR Fails to Completely and Accurately Describe the Affected Environmental Setting and Baseline Conditions.

A complete and accurate description of the existing and affected environmental setting is critical for an adequate evaluation of impacts to it. See e.g. *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1122; *County of Amador v. El Dorado County*

¹³ SLDMWA JPA, para. 6, pp. 4-7.

¹⁴ StAmant 2014. Letter to Bureau of Reclamation and SLDMWA re the 2015-2024 Water Transfer Program.

Water Agency (1999) 76 Cal.App.4th 931, 955; *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94.

21
Con't

As discussed, below, and in the expert reports submitted by *Custis*, *EcoNorthwest*, *Cannon*, and *Mish* on behalf of AquAlliance, the EIS/EIR fails to comport with these standards.

a. The EIS/EIR Fails to Describe Existing Physical Conditions.

i. Groundwater Supply

The EIS/EIR fails to provide a comprehensive assessment of the historic change in groundwater storage in the Sacramento Valley groundwater basin, and other seller sources areas within the proposed 10-year groundwater substitution transfer project. Historic change and current groundwater contour maps are critical to establishing an environmental baseline for the groundwater substitution transfers. The EIS/EIR uses SACFEM2013 simulations of groundwater substitution transfer pumping effects for WY 1970 to WY 2003, but the discussion of the simulation didn't provide specifics on how the model simulated the current conditions of the Sacramento Valley groundwater system or the potential impacts from the 10-year groundwater substitution transfer project based on current conditions. Again, The EIS/EIR relies on only modeling to consider impacts from the Project when it should disclose the results from actual monitoring and reporting for water transfer conducted in 12 of the last 14 years.

22

The EIS/EIR concludes that the Sacramento Valley basin's groundwater storage has been relatively constant over the long term, decreasing during dry years and increasing during wetter periods, but the EIR/EIS ignores more recent information and study (e.g. Brush 2013a and 2013b, NCWA, 2014a and 2014b). According to the BDCP EIS/EIR:

Some locales show the early signs of persistent drawdown, including the northern Sacramento County area, areas near Chico, and on the far west side of the Sacramento Valley in Glenn County where water demands are met primarily, and in some locales exclusively, by groundwater. These could be early signs that the limits of sustainable groundwater use have been reached in these areas."

(BDCP EIS/EIR at 7-13.) The Draft EIS/EIR provides only one groundwater elevation map of the Sacramento Valley groundwater basin, Figure 3.3-4, which shows contours only from selected wells that omit many depths and areas. The Draft EIS/EIR doesn't provide maps showing groundwater elevations, or depth to groundwater, for groundwater substitution transfer seller areas in Sutter, Yolo, Yuba, and Sacramento counties. The DWR provides on a web site a number of additional groundwater level and depth to groundwater maps that the EIS/EIR should use to help complete its description of the affected environment.¹⁵

23

¹⁵ http://www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/gw_level_monitoring.cfm#Well%20Depth%20Summary%20Maps

Presented below are tables that illustrate maximum and average groundwater elevation decreases for Butte, Colusa, Glenn, and Tehama counties at three aquifer levels in the Sacramento Valley between the fall of 2004 and 2013. (Id).

County Fall '04 - '13	Deep Wells (Max decrease gwe)	Deep Wells (Avg. decrease gwe)
Butte	-11.4	-8.8
Colusa	-31.2	-20.4
Glenn	-60.7	-37.7
Tehama	-19.5	-6.6

County Fall '04 - '13	Intermediate Wells (Max decrease gwe)	Intermediate Wells (Avg. decrease gwe)
Butte	-21.8	-6.5
Colusa	-39.1	-16.0
Glenn	-40.2	-14.5
Tehama	-20.1	-7.9

County Fall '04 - '13	Shallow Wells (Max decrease gwe)	Shallow Wells (Avg. decrease gwe)
Butte	-13.3	-3.2
Colusa	-20.9	-3.8
Glenn	-44.4	-8.1
Tehama	-15.7	-6.6

Below are the results from DWR's spring monitoring for Sacramento Valley groundwater basin from 2004 to 2014.

County Spring '04 - '14	Deep Wells (Max decrease gwe)	Deep Wells (Avg. decrease gwe)
Butte	-20.8	-14.6
Colusa	-26.9	-12.6
Glenn	-49.4	-29.2
Tehama	-6.1	-5.3

County Spring '04 - '14	Intermediate Wells (Max decrease gwe)	Intermediate Wells (Avg. decrease gwe)
Butte	-25.6	-12.8
Colusa	-49.9	-15.4
Glenn	-54.5	-21.7
Tehama	-16.2	-7.9

23
con't

County Spring '04 - '14	Shallow Wells (Max decrease gwe)	Shallow Wells (Avg. decrease gwe)
Butte	-23.8	-7.6
Colusa	-25.3	-12.9
Glenn	-46.5	-12.6
Tehama	-38.6	-10.8

23
Con't

The DWR data clearly present a different picture of the condition of the Sacramento Valley groundwater basin over time than what is provided in the EIS/EIR. This must be corrected and considered in the NEPA and CEQA process.

The EIS/EIR omits other critical information needed to understand the project's impacts to area groundwater, including but not limited to:

24

- the distances between the transfer well(s) and surface water features;
- the number of non-participating wells in the vicinity of the transfer wells that may be impacted by the pumping; and,
- the distance between the transfer wells and non-participant wells that may be impacted by the transfer pumping, including domestic, public water supply and agricultural wells.

The EIS/EIR assumes that, "The groundwater modeling results indicate that shallow groundwater is typically deeper than 15 feet in most locations under existing conditions, and often substantially deeper." (3.8-32.) However, existing hydrologic condition documents clearly show Depth to Groundwater levels in shallow portions of the aquifer system that are <15' from the surface.

25

- The Chart titled **Depth to Water by Sub-Inventory Unit (SIU) on 2014_10_Summary_Table.PDF** page 2/2 shows the Average Depth to Water (feet) in March through October 2014. 7 of 16 Sub-Inventory Units ("SIUs") in Butte County show average groundwater levels <15' from the surface at some time of the year.¹⁶
- November 2014 Adobe spreadsheets show numerous monitoring wells with water levels closer than 10' to the surface. The wells are located in Butte County SIUs designated under the county Basin Management Objective ("BMO") program. While some of the SIUs are corresponding to an Irrigation District primarily served by surface water, the Butte Sink, Cherokee, North Yuba, Angel Slough, Llano Seco and M&T SIUs have naturally occurring water levels <10'. All 3 pages show ground surface to water surface (feet).¹⁷

¹⁶https://www.buttecounty.net/wrcdocs/Programs/Monitoring/GWLevels/2014/2014_10_Summary_Table.pdf
https://www.buttecounty.net/wrcdocs/Programs/Monitoring/GWLevels/2014/2014_10_Data_Summary_Update.pdf (Exhibit K)

¹⁷ 2014 Monthly Groundwater Depth to Water- CASGEM:
https://www.buttecounty.net/wrcdocs/Programs/Monitoring/GWLevels/2014/2014_10_Data_Summary_Update.pdf (Exhibit K)

- The January 2014 *BUTTE COUNTY DOMESTIC WELL DEPTH SUMMARY* shows the 10' Depth to Groundwater Contour lines in the lower portion of the map.¹⁸
- The January 2014 *COLUSA COUNTY DOMESTIC WELL DEPTH SUMMARY* shows the 10' Depth to Groundwater Contour lines in large portions of the county.¹⁹
- The January 2014 *GLENN COUNTY DOMESTIC WELL DEPTH SUMMARY* shows the 10' Depth to Groundwater Contour lines in the lower portion of the map.²⁰

25
con't

Dan Wendell of The Nature Conservancy, a panelist at a workshop held by the California Natural Resources Agency, the California Department of Food and Agriculture, and California EPA on March 24, 2014, presented a similar picture as the county summaries above, but also raised the alarm about the existing, significant streamflow losses from groundwater pumping and, even more significantly, how long it takes for those losses to appear:

"The Sacramento Valley still has water levels that are fairly shallow," he said.
"There are numerous perennial streams and healthy ecosystems, and the basin is largely within a reasonable definition of sustainable groundwater yield. However, since the 1940s, groundwater discharge to streams in this area has decreased by about 600,000 acre-feet per year due to groundwater pumping, and it's going to decrease an additional 600,000 acre-feet in coming years under 2009 status quo conditions due to the time it takes effects of groundwater pumping to reach streams. It takes years to decades, our work is showing."²¹

26

What areas in the Sellers' region were used to reach the EIS/EIR conclusion that "[i]ndicate that shallow groundwater is typically deeper than 15 feet"? What prevented the analysis from disclosing the many miles of riparian habitat in the Sacramento Valley that indicate that riparian forest vegetation remains healthy with groundwater levels shallower than 15 feet? As we presented above, there are many areas in the Sellers' region that have groundwater higher than 15 feet below ground surface.

In addition, the EIS/EIR fails to provide recharge data for the aquifers. Professor Karin Hoover, Assistant Professor of hydrology, hydrogeology, and surficial processes from CSU Chico, found

27

¹⁸ Butte County shallow Groundwater Contours:

[www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic BUTTE.pdf](http://www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic_BUTTE.pdf) (Exhibit L)

¹⁹ Colusa County shallow Groundwater Contours:

[www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic COLUSA.pdf](http://www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic_COLUSA.pdf) (Exhibit M)

²⁰ Glenn County shallow Groundwater Contours:

[www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic GLENN.pdf](http://www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/WellDepthSummaryMaps/Domestic_GLENN.pdf) (Exhibit N)

²¹ <http://mavensnotebook.com/2014/04/28/groundwater-management-workshop-part-1-sustainable-groundwater-management-panel/> (Exhibit O)

in 2008 that, “Although regional measured groundwater levels are purported to ‘recover’ during the winter months (Technical Memorandum 3), data from Spangler (2002) indicate that recovery levels are somewhat less than levels of drawdown, suggesting that, in general, water levels are declining.” According to Dudley, “Test results indicate that the ‘age’ of the groundwater samples ranges from less than 100 years to tens of thousands of years. In general, the more shallow wells in the Lower Tuscan Formation along the eastern margin of the valley have the ‘youngest’ water and the deeper wells in the western and southern portions of the valley have the ‘oldest’ water,” adding that “the youngest groundwater in the Lower Tuscan Formation is probably nearest to recharge areas.” (2005). “This implies that there is currently no active recharge to the Lower Tuscan aquifer system (M.D. Sullivan, personal communication, 2004),” explains Dr. Hoover. “If this is the case, then water in the Lower Tuscan system may constitute fossil water with no known modern recharge mechanism, and, once it is extracted, it is gone as a resource,” (Hoover 2008).²²

27

ii. Groundwater Quality

The Draft EIS/EIR discusses the potential for impacts to groundwater quality by migration of contaminants as a result of groundwater substitution pumping, but provides only a general description of the current condition of groundwater quality. No maps are provided that show the baseline groundwater quality and known areas of poor or contaminated groundwater, or from all areas where groundwater pumping may occur. Groundwater quality information on the Sacramento Valley area is available from existing reports by the USGS (1984, 2008b, 2010, and 2011) and Northern California Water Association (NCWA, 2014c). Determination of groundwater quality prior to pumping is critical to avoiding significant adverse impacts, both to adjacent groundwater users impacted by migrating contaminants, as well as surface water potentially impaired by contaminated runoff from irrigated agriculture or other uses.

28

There are numerous hazardous waste plumes in Butte County, which could easily migrate with the potential increased groundwater pumping proposed for the Project. The State Department of Toxics Control and the Regional Water Resources Control Boards have a great deal of information readily available for all counties involved with the proposed Project. Fluctuating domestic wells can lead to serious contamination from heavy metals and non-aqueous fluids. Because the Bureau fails to disclose basic standards for the mitigation and monitoring requirements, it is unknown if hazardous plumes in the areas of origin will be monitored or not.

29

²² Spangler, Deborah L. 2002. *The Characterization of the Butte Basin Aquifer System, Butte County, California*. Thesis submitted to California State University, Chico; Dudley, Toccoy et al. 2005. *Seeking an Understanding of the Groundwater Aquifer Systems in the Northern Sacramento Valley: An Update*; Hoover, Karin A. 2008. *Concerns Regarding the Plan for Aquifer Performance Testing of Geologic Formations Underlying Glenn-Colusa Irrigation District, Orland Artois Water District, and Orland Unit Water Users Association Service Areas, Glenn County, California*. White Paper. California State University, Chico.

Please note the attached map from the State Water Resources Control Board (2008) that highlights areas vulnerable to groundwater contamination throughout the state. A significant portion of both the areas of origin and the receiving areas are highlighted. When the potential for serious health and safety impacts exists, NEPA and CEQA require that this must be disclosed and analyzed.

29
Con't

iii. Surface Water Flows

The EIS/EIR asserts that, under the no action/no project alternative, "Surface water supplies would not change relative to existing conditions. Water users would continue to experience shortages under certain hydrologic conditions, requiring them to use supplemental water supplies." (3.1-15.) It would be most helpful if the lead agencies would explain the geographic scope of this statement since the shortages could be experienced throughout the areas of origin, transmission, and delivery – as well as the entire State of California. The section continues with, "Under the No Action/No Project Alternative, some agricultural and urban water users may face potential shortages under dry and critical hydrologic conditions." Again, to what geographic areas is the EIS/EIR referring? The final sentence in the section reads, "Impacts to surface water supplies would be the same as the existing conditions." Without further elaboration or a reference that would further explain what exactly are the "existing conditions, mentioned" this is merely a conclusory assertion without the benefit of factual data. For example, existing conditions vary wildly in California weather patterns and agency allocations can as well. For example, in 2014 CVP Settlement Contractors were threatened with an unprecedented 40 percent allocation, which later became 75 percent when they cooperated with water transfers. Failing to disclose the wide range of natural and agency decisions that comprise the No Action/No Project alternative must be corrected and re-circulated in another draft EIS/EIR.

30

The EIS/EIR states that "[b]ecause of the interaction of surface flows and groundwater flows in riparian systems, including associated wetlands, enables faster recharge of groundwater, these systems are less likely to be impacted by groundwater drawdown as a result of the action alternatives;" therefore, "[t]hese systems are less likely to be impacted by groundwater drawdown as a result of the action alternatives." (EIS/EIR 3.8-32.) This flawed assumption has been readily discredited by USGS:

31

There is more of an interaction between the water in lakes and rivers and groundwater than most people think. Some, and often a great deal, of the water flowing in rivers comes from seepage of groundwater into the streambed. Groundwater contributes to streams in most physiographic and climatic settings... Groundwater pumping can alter how water moves between an aquifer and a stream, lake, or wetland by either intercepting groundwater flow that discharges into the surface-water body under natural conditions, or by

increasing the rate of water movement from the surface-water body into an aquifer. A related effect of groundwater pumping is the lowering of groundwater levels below the depth that streamside or wetland vegetation needs to survive. The overall effect is a loss of riparian vegetation and wildlife habitat.²³

31

Lastly, the EIR/EIS presents the rivers and streams analyzed for impacts from the Proposed Action alternative with numerous omissions and conclusory remarks that are not supported. (3.8-49 – 3.8-51.) Examples include:

- *Table 3.8.3 Screening Evaluation Results for Smaller Streams in the Sacramento River Watershed for Detailed Vegetation and Wildlife Impact Analysis for the Proposed Action* fails to designate the counties of origin except for Deer and Mill creeks. Even readers familiar with the region need this basic information.
- Creeks with groundwater/surface water connections, but omitted from Tehama and Butte counties in Table 3.8.3 include, but are not limited to: Clear, Cottonwood, Battle, Singer, Pine, Zimmershed, Rock, Mud, and Big Chico.
- The modeling that is used to omit streams from analysis and to select and analyze other streams is completely inadequate to the task. Page D-3 has information about model resolution. It is normal to have five to ten nodes to resolve a feature of interest, but the nodal spacing is listed as ranging from 125 to 1000 meters, with stream node spacing around 500 meters (EIS/EIR p. D-3). This implies that spatial features smaller than about 2 kilometers cannot be resolved with this model. With the physical response of interest below the threshold of resolution even under the best of circumstances, then you have 100% margin of error, because the model cannot "see" that response.²⁴

32

iv. Surface Water Quality

The baseline water quality data presented in the EIS/EIR is insufficient to accomplish any meaningful understanding of existing water quality levels throughout the project area. The EIS/EIR fails to show where each affected water body is, or disclose its existing beneficial uses, or numeric water quality objectives. Data that are presented is scattered, inconsistent, incomplete, often severely out of date, and often misleading. Further, the EIS/EIR fails to explain exactly where much of the presented water quality data comes from – indeed, failing to explain exactly where the affected environment is at all.

33

Many waterways are left out of this section entirely. The biological and vegetation effects of the program are discussed elsewhere in the EIS/EIR, and show that most would be impacted by the proposed program, but these waterways are not discussed in the EIS/EIR water quality section. Diminished flows can affect water quality in a variety of way, for example, causing

34

²³ The USGS Water Science School. <http://ga.water.usgs.gov/edu/gwdepletion.html>

²⁴ Mish, p. 8. (Exhibit C)

higher temperatures, lower dissolved oxygen, or high sediment contamination or turbidity. Therefore, these affected waterways should be described and analyzed in the EIS/EIR water quality chapter.

34
Con't

In addition, the EIS/EIR only names the California Aqueduct, the Delta-Mendota Canal, and the San Luis Reservoir as affected waters within the buyer areas. Later, the EIS/EIR admits that increased irrigation in the buyers' areas may adversely impact stream water quality, but none of these rivers, streams, creeks, or any other potentially affected waterway of any kind, are described in the buyer project areas. (EIS/EIR 3.2-26.)

35

The EIS/EIR also fails to meaningfully describe the existing water quality in the affected environment. The EIS/EIR repeatedly misleads the public and decision-makers regarding the baseline conditions of waters within the project area by labeling them as "generally high quality." For example, the EIS/EIR states that "certain segments of the Sacramento River contain several constituents of concern, including Chlordane, dichlorodiphenyltrichloroethane, Dieldrin, mercury, polychlorinated biphenyls (PCBs), and unknown toxicity (see Table 3.2-1); however, the water quality in the Sacramento River is generally of high quality." What is the basis for this non-sequitur used here, and repeated throughout the existing environmental descriptions in the EIS/EIR? How do constituents of concern and unknown toxicity translate to generally high quality?

36

The remaining baseline information presented in the EIS/EIR contains significant gaps that preclude a meaningful understanding of the existing environmental conditions. In order to attempt to characterize the water quality in the affected environmental area, the EIS/EIR lists out beneficial uses, 303(d) impairments, and a variety of water quality monitoring data. The EIS/EIR presents almost no reference to existing numeric water quality objectives, and evaluation of potential breaches of those standards is therefore impossible.

Table 3.2-1 lists 303(d) impairments within the area of analysis. The table states the approximate mileage or acreage of the portion of each water body that is impaired, but fails to inform the public exactly where these stretches are located. For example, table 3.2-1 states that, within the Delta, approximately 43,614 acres are impaired for unknown toxicity, 20,819 acres are impaired for electrical conductivity, and 8,398 acres are impaired for PCBs; but without knowing which acres within the Delta this table describes, it is impossible to know whether transfer water will affect those particular areas. This problem repeats for all impairments listed in table 3.2-1.

37

The baseline environmental condition of the Delta is poorly described. The EIS/EIR states that:

[e]xisting water quality constituents of concern in the Delta can be categorized broadly as metals, pesticides, nutrient enrichment and associated eutrophication, constituents associated with suspended sediments and turbidity, salinity, bromide, and organic

38

carbon. Salinity is a water quality constituent that is of specific concern and is described below.

(EIS/EIR at 3.2-21.) The EIS/EIR provides no further information about “metals, pesticides, nutrient enrichment and associated eutrophication, constituents associated with suspended sediments and turbidity.” These contaminants are each the focus of intensive regulation and controversy, and could cause significant adverse impacts if contaminated surface waters are transferred, but no meaningful baseline data of existing conditions is provided to facilitate an evaluation of the effects of the incremental changes caused by the proposed program.

38
Con't

The EIS/EIR provides scattered and essentially useless monitoring data to attempt to describe the existing water quality conditions in the program area. First, the EIS/EIR is unclear exactly what year or years it uses to constitute the baseline environmental conditions. Then, Tables 3.2-4 through 3.2-20 provide data from 1980 through 2014. Some tables average data, some use median data, some present isolated data, and none provide a comparison to existing numeric water quality objectives. Of all of the existing environmental baseline data provided, only table 3.2-15 provides any data regarding contamination caused by metals in the water column, and only for Lake Natoma from April to September of 2008. As a result, any contamination relating to any metals in any transfer water is essentially ignored by the EIS/EIR. Moreover, the scattershot data provided in the EIS/EIR does not provide the public with any information about the actual water quality of transfer water that may be used in any future project.

39

Table 3.2-21 presents mean data from “selected” monitoring stations throughout the Delta. The EIS/EIR states that “[s]ampling period varies, depending on location and constituent, but generally is between 2006-2012.” (EIS/EIR 3.2-22.) EIS/EIR readers simply have no way to know what these data actually represent. Columns are labeled “mean TDS,” “mean electrical conductivity,” and “mean chloride, dissolved.” Are these data averaged for the approximate period of 2006-2012? Were any data excluded? The EIS/EIR lists these monitoring stations, but doesn’t explain where each is actually located, which should be mapped for ease of reference. Nor does the EIS/EIR state what the applicable water quality objective is at each monitoring point for each parameter; nor how often these water quality objectives were breached.

40

Figure 3.2-2 presents the monthly median chloride concentrations at selected monitoring sites, and misleadingly states that these median concentrations do not exceed the secondary MCL for chloride of 250 mg/L; but that comparison is irrelevant as the Bay-Delta Plan sets water quality objectives for chloride at 250 mg/day, not monthly mean.

41

Figures 3.2-3 through 3.2-5 show average electrical conductivity at selected monitoring stations, but the EIS/EIR fails to state the relevant water quality standard against which to compare these data, and fails to report the frequency and magnitude of exceedances, which

42

are numerous and great. When do exceedances occur, and how can the proposed program avoid transferring water from or into waterways with elevated EC?

42
Con't

The EIS/EIR fails to provide any discussion or analysis of how SWRCB Decision 1641 would be implemented. The EIS/EIR states that Decision 1641 “requires Response Plans for water quality and water levels to protect diverters in the south Delta that may affect the opportunity to export transfers.” (EIS/EIR at 2-32.) Later, the EIS/EIR adds that Decision 1641 “require[s] that the Central Valley Project (CVP) and State Water Project (SWP) be operated to protect water quality, and that DWR and/or Reclamation ensure that the flow dependent water quality objectives are met in the Delta (SWRCB 2000).” (EIS/EIR 3.2-10.) Nowhere does the EIS/EIR actually identify what these requirements entail, nor analyze when they would or would not be met by any portion of the proposed program. D-1641 is among the most critical of water quality regulations controlling the proposed program, and the EIS/EIR must provide significantly more analysis of how it would propose to comply with these State Water Board standards. As discussed, below, compliance with D-1641 standards is far from certain.

43

Similarly, the EIS/EIR notes that “DWR has developed acceptance criteria to govern the water quality of non-Project water that may be conveyed through the California Aqueduct. These criteria dictate that a pump-in entity of any non-project water program must demonstrate that the water is of consistent, predictable, and acceptable quality prior to pumping the local groundwater into the SWP.” (EIS/EIR at 3.2-10.) Again, however, the EIS/EIR fails to explain what these criteria require, and fails to provide any discussion of whether, when, or how these criteria could be met for each transfer contemplated by the program. This lack of information and analysis is insufficient to support informed public and agency environmental decision-making.

44

IV. The EIS/EIR Fails to Evaluate Inconsistency with Applicable Laws, Plans, and Policies.

a. State Water Policies.

The EIS/EIR should fully disclose the consolidated places of use for DWR and the Bureau, and what criteria might be applied for greater flexibility claimed for the consolidated place of use necessary for any given year's water transfer program, and what project alternatives could avoid this shift. Could the transfers be facilitated through transfer provisions of the Central Valley Project Improvement Act? Would the consolidation be a permanent or temporary request, and would the consolidation be limited to the duration of just the *2015-2024 Water Transfer Program*? How would the consolidated places of use permit amendments to the SWP and CVP permits relate to their joint point of diversion? Would simply having the joint point of diversion in place under D-1641 suffice for the purpose of the Project?

45

The EIS/EIR should better describe existing water right claims of sellers, buyers, the Bureau, and DWR. In response to inquiries from the Governor’s Delta Vision Task Force, the SWRCB

46

acknowledged that while average runoff in the Delta watershed between 1921 and 2003 was 29 million acre-feet annually, the 6,300 active water right permits issued by the SWRCB is approximately 245 million acre-feet²⁵ (pp. 2-3). In other words, **water rights on paper are 8.4 times greater than the real water in California's Central Valley rivers and streams diverted to supply those rights on an average annual basis.** And the SWRCB acknowledges that this 'water bubble' does not even take account of the higher priority rights to divert held by pre-1914 appropriators and riparian water right holders (*Id.* p. 1). More current research reveals that the average annual unimpaired flow in the Sacramento River basin is 21.6 MAF, but the consumptive use claims are an extraordinary 120.6 MAF – 5.6 times more claims than there is available water.²⁶ Informing the public about water rights claims would necessarily show that buyers and the Agencies clearly possess junior water rights as compared with those of many willing sellers. Full disclosure of these disparate water right claims and their priority is needed to help explain the actions and motivations of buyers and sellers in the *2015-2024 Water Transfer Program*. Otherwise the public and decision makers have insufficient information on which to support and make informed choices.

46
Con't

To establish a proper legal context for these water rights, the EIS/EIR should also describe more extensively the applicable California Water Code sections about the treatment of water rights involved in water transfers.

Like federal financial regulators failing to regulate the shadow financial sector, subprime mortgages, Ponzi schemes, and toxic assets of our recent economic history, the state of California has been derelict in its management of scarce water resources. As we mentioned above we are supplementing these comments on this matter of wasteful use and diversion of water by incorporating by reference and attaching the 2011 complaint to the State Water Resources Control Board of the California Water Impact Network the California Sportfishing Protection Alliance, and AquAlliance on public trust, waste and unreasonable use and method of diversion as additional evidence of a systemic failure of governance by the State Water Resources Control Board, the Department of Water Resources and the U.S. Bureau of Reclamation, filed with the Board on April 21, 2011. (Exhibit Q)

47

b. Public Trust Doctrine.

The State of California has the duty to protect the people's common heritage in streams, lakes, marshlands, and tidelands through the Public Trust Doctrine.²⁷ The Sacramento, Feather, and Yuba rivers and the Delta are common pool resources. DWR acknowledges this legal reality in

48

²⁵ SWRCB, 2008. Water Rights Within the Bay Delta Watershed (Exhibit P.)

²⁶ California Water Impact Network, AquAlliance, and California Sportfishing Protection Alliance 2012. *Testimony on Water Availability Analysis for Trinity, Sacramento, and San Joaquin River Basins Tributary to the Bay-Delta Estuary*. (Exhibit Q)

²⁷ *National Audubon Society v. Superior Court* (1983) 33 Cal 3d, 419, 441.

its publication, *Water Transfer Approval: Assuring Responsible Transfers*.²⁸ The application of the Public Trust Doctrine requires an analysis of the public trust values of competing alternatives, as was directed by the State Water Board in the Mono Lake Case. Its applicability to alternatives for the water transfers planned from the Sacramento, Feather, and Yuba rivers and through the Delta, where species recovery, ecosystem restoration, recreation and navigation are pitted against damage from water exports, is exactly the kind of situation suited to a Public Trust analysis, which should be required by the 2015-2024 Water Transfer Program. The act of appropriating water—whether for a new use or for a new method of diversion or of use— is an acquisition of a property right from the waters of the state, an act that is therefore subject to regulation under the state’s public trust responsibilities. Groundwater pumping with adverse effects to public trust surface waters must also be considered.

48
Con't

c. Local General Plans and Ordinances.

The Draft EIS/EIR discusses only two county ordinances, the Colusa Ordinance No. 615 and Yolo Export Ordinance No. 1617, one agreement, the Water Forum Agreement in Sacramento County, and one conjunctive use program, the American River Basin Regional Conjunctive Use Program. Except for the brief discussion of the two ordinances, one agreement, and one conjunctive use program listed above, the Draft EIS/EIR doesn’t describe the requirements of local GMPs, ordinances, and agreements listed in Tables 3.3-1 (page 3.3-8) and Table 3-1 (page 27). Thus, the actual groundwater substitution transfer project permit requirements, restrictions, conditions, or exemptions required for each seller service area by the Bureau, DWR, and one or more County GMP or groundwater ordinance will apparently be determined at a future date.

49

Additional information is needed on what the local regulations require for exporting groundwater out of each seller’s groundwater basin. The Draft EIS/EIR needs to discuss how the local regulations ensure that the project complies with Water Code Sections 1220, 1745.10, 1810, 10750, 10753.7, 10920-10936, and 12924 (for more detailed discussion of these Water Codes see Draft EIS/EIR Section 3.3.1.2.2). Although the Draft EIS/EIR doesn’t document, compare or evaluate the requirements of all local agencies that have authority over groundwater substitution transfers in each seller service area, the Draft EIS/EIR concludes that the environmental impacts from groundwater substitution transfer pumping by each of the sellers will either be less than significant and cause no injury, or be mitigated to less than significant through mitigation measures WS-1, and GW-1 with its reliance on compliance with local regulations.

²⁸ California Department of Water Resources, *Water Transfer Approval: Assuring Responsible Transfers*, July 2012, page 3. Accessible online 16 February 2014 at http://www.water.ca.gov/watertransfers/docs/responsible_water_transfers_2012.pdf. In addition, the Delta Protection Act of 1959 also acknowledges this reality, California Water Code Sections 12200-12205. (Exhibit R)

As noted above, this conclusions is derived from information absent from the EIS/EIR and, even if there was information considered by the Lead Agencies, without any apparent analysis. Butte, Glenn, and Shasta counties represent counties with Sellers and all of them have the potential to be heavily impacted by activities in or adjacent to their jurisdictions. AquAlliance has examined their ordinances and found them insufficient to protect other users and the environment (Exhibits U, V, X). Sincere efforts at monitoring for groundwater levels and subsidence become meaningless if the monitoring infrastructure is scant and enforcement absent. The Butte County Department of Water and Resource Conservation also explains that local plans are simply not up to the task of managing a regional resource:

Each of the four counties that overlie the Lower Tuscan aquifer system has their own and separate regulatory structure relating to groundwater management. Tehama County, Colusa, and Butte Counties each have their own version of an export ordinance to protect the citizens from transfer-related third party impacts. Glenn County does not have an export ordinance because it relies on Basin Management Objectives (BMOs) to manage the groundwater resource, and subsequently to protect third parties from transfer related impacts. Recently, Butte County also adopted a BMO type of groundwater management ordinance. Butte County, Tehama County and several irrigation districts in each of the four counties have adopted AB3030 groundwater management plans. All of these groundwater management activities were initiated prior to recognizing that a regional aquifer system exists that extends over more than one county and that certain activities in one county could adversely impact another. Clearly the current ordinances, AB3030 plans, and local BMO activities, which were intended for localized groundwater management, are not well suited for management of a regional groundwater resource like that theorized of the Lower Tuscan aquifer system.²⁹

50

There is a possibility that a seller's groundwater substitution area of impact will occur in multiple local jurisdictions, which should results in project requirements coming from multiple local as well as state and federal agencies. The Draft EIS/EIR doesn't discuss the obstacles from cross jurisdictional impacts that are immense because groundwater basins cross county lines thereby eliminating authority. (*Id*) One obvious example is found with productions wells placed in Glenn County in the lower end of the Tuscan Aquifer Basin that may affect the up-gradient part of the aquifer in Butte and Tehama counties.

51

If the Project proceeds, each seller's project analysis should identify what future analyses, ordinances, project conditions, exemptions, monitoring and mitigation measures are required to ensure that each of the seller's project meets or exceed the goals of the Draft EIS/EIR.

V. The EIS/EIR Fails to Adequately Analyze Numerous Environmental Effects.

52

²⁹ Butte County Department of Water and Resource Conservation, *Needs Assessment Tuscan Aquifer Monitoring, Recharge, and Data Management Project*, 2007. (Exhibit S)

The EIS/EIR fails to include numerous required elements to support a meaningful analysis of the project's significant adverse impacts. First, the deficiencies in the incomplete and undefined project description, and incomplete description of existing environmental conditions, render any true impact analysis, or hard look at the project effects, impossible. *See, e.g., Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645. Even the analysis provided, however, employs unsupported and inapplicable standards of significance. (CEQA Guidelines § 15064(b); *see, e.g., Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111). The EIS/EIR fails to completely analyze the project's significant adverse impacts, and fails to support its conclusions with substantial evidence, failing to characterize the project effects in the proper context and intensity. (*Id.*; 40 C.F.R. § 1508.27(a); *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 391; *Laurel Heights Improvement Association v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102 ("whether an EIR is sufficient as an informational document is a question of law subject to independent review by the courts."))

52
Con't

As discussed, below, and in the expert reports submitted by *Custis*, *EcoNorthwest*, *Cannon*, and *Mish* on behalf of AquAlliance, the EIS/EIR fails to comport with these standards.

a. Surface Water Flows.

The EIS/EIR fails to adequately analyze changes to all surface water flows as a result of the proposed project. While the EIS/EIR presents some level of streamflow drawdown analysis in its vegetation and biological resources section, that analysis is not taken into consideration with respect to affects to other water supply rights. This raises the specter of injury to senior water rights holders, and the EIS/EIR fails to provide sufficient information regarding where such rights are held and in what amounts, and where proposed transfers may interfere.

53

Streamflow depletion in the EIS/EIR is evaluated through modeling, but a closer look at the models employed shows significant omissions. First, because the rate of stream depletion is scaled to pumping rate and because the model documentation doesn't indicate the pumping locations, rates, volumes, times or durations that produced the pumped volumes shown in Figure 3.3-25, or the stream depletions shown in Figures B-5 and B-6 in Appendix B, it appears that the SACFEM2013 modeling did not simulate the maximum rate of stream depletion for the proposed 10-year project. Second, the available Delta export capacity was determined from CalSim II model results using only conditions through WY 2003, which fails to account for

54

55

current conditions, climate change conditions, and future conditions. (EIS/EIR 3.7-18.) The adequacy of CalSIM II has also been called into question.³⁰

55
Con't

In addition, the Bay-Delta Conservation Plan establishes flow limits for the Delta that the EIS/EIR fails to consider. Instead, the EIS/EIR states that the proposed projects could decrease outflows by 0.3 percent in winter and spring, and provides a bare conclusion that this impact is less than significant. (EIS/EIR 3.2-39.) Just this year the Bureau of Reclamation and DWR requested a Temporary Urgency Change from the SWRCB, a modification to Delta flow objectives that were not being met, and D-1641 standards, in order to attempt to manage species protection.³¹

56

The EIS/EIR attempts to consider changes in available supplies for project participants, but fails to review what other water rights holders may be affected by diminished flows. This is especially important given the EIS/EIR's conclusion that transfers would be most needed in times of critical shortage.

57

The EIS/EIR also fails to disclose changes in flows as a result of tailwater and ag drainage, which could lead to significant streamflow impacts.

58

b. Water Quality.

- i. The EIS/EIR improperly excludes substantial amounts of water from any meaningful impact evaluation.

The EIS/EIR fails to provide any evidence to support its proposition that "if the change in flow is less than ten cubic feet per second (cfs), it is assumed that there would be no water quality impacts as this is within the error margins of the model." (EIS/EIR 3.2-27.) First, the margin of error of the model has no bearing on actual water quality. Second, NPDES permits regularly regulate flows of less than 10 cfs. According to USGS, 10 cfs equals 6.46 million gallons per day (MGD). The EIS/EIR's assumption that a change in reservoir elevation of less than 1,000 acre feet could not possibly have significant impacts to water quality is similarly baseless. (EIS/EIR 3.2-27.) This amounts to approximately 325,800 gallons of water, more than enough to result in a noticeable difference in water quality. The Federal Clean Water Act is a strict liability statute providing no de minimis exceptions. By way of comparison, the City of Galt Wastewater Treatment Plant maintains flows at 4.5 MGD (NPDES Permit No. CA0081434), the City of Colusa Wastewater Treatment Plant maintains flows of approximately 0.7 MGD (NPDES Permit No. CA0078999), and each of these facilities has been assessed penalties for effluent exceedances by the Regional Water Board in recent years. The EIS/EIR's conclusion that flows equivalent to entire municipal wastewater treatment plants have no ability to compromise water quality standards is simply wrong.

59

³⁰ Close, A., et al, 2003. A Strategic Review of CALSIM II and its Use for Water Planning, Management, and Operations in Central California (Exhibit T)

³¹ Letter from Mark W. Cowin to Tom Howard, April 9, 2014 (Exhibit U)

Similarly, the EIS/EIR provides the bare conclusion that:

CVP and SWP reservoirs within the Seller Service Area would experience only small changes in storage, which would not be of sufficient magnitude and frequency to result in substantive changes to water quality. Any small changes to water quality would not adversely affect designated beneficial uses, violate existing water quality standards, or substantially degrade water quality. Consequently, potential effects on reservoir water quality would be less than significant.

60

(EIS/EIR 3.2-31.) The EIS/EIR simply provides no evidence or analysis in making this conclusion.

Lastly, the EIS/EIR provides no actual analysis of potential impacts to San Luis Reservoir as a result of lowering water levels in response to transfers. The EIS/EIR admits that “storage under the Proposed Action would be less than the No Action/No Project Alternative for all months of the year,” and asserts that water levels would be lowered between 3%-6% as a result of the Project. (EIS/EIR 3.2-41.) The EIS/EIR then presents the bare conclusion that “These small changes in storage are not sufficient to adversely affect designated beneficial uses, violate existing water quality standards, or substantially degrade water quality.” The EIS/EIR provides no basis for this determination, including no comparison of baseline environmental conditions to changes in contaminated runoff as a result of any particular water transfer.

61

- ii. The EIS/EIR fails to provide any information with which to evaluate impacts from idled crop fields, or farmlands in buyers’ areas.

The EIS/EIR assumes certain agricultural practices will occur at idle rice fields, when in reality, property owners would be free to re-purpose idled fields in countless and creative ways. (EIS/EIR 3-2.30.) For idled alfalfa, corn, or tomato cropland, the EIS/EIR assumes that property owners will put in place erosion control measures to conserve soil. While this may be a reasonable assumption for some farms, others, who may prefer to pursue multi-year water transfers, may not have an interest in investing in soil conservation. In addition, the EIS/EIR fails to provide analysis of the degree of effectiveness of soil conservation measures where no groundcover is in place. (EIS/EIR 3.2-29.) If proven to be effective, the EIS/EIR should require the Lead Agencies to condition water transfers on these necessary mitigation measures, and provide monitoring and reporting to ensure their continued implementation. We recommend that the Bureau and DWR require, at a minimum, that local governments select independent third-party monitors, who are funded by surcharges on Project transfers paid by the buyers, to oversee the monitoring that is proposed in lieu of Bureau and DWR staff, and that peer-reviewed methods for monitoring be required. If this is not done, the Project’s proposed monitoring and mitigation outline is insufficient and cannot justify the significant risk of adverse environmental impacts.

62

The EIS/EIR also states that increased erosion would not be of concern in Butte, Colusa, Glenn, Solano, Sutter, and Yolo counties, due to the prevalence of clay and clay loam soils. (EIS/EIR 3.2-29.) This bare conclusion does not provide any meaningful evaluation of the proposed program's impacts. Does the EIS/EIR really mean to assert that nowhere across six entire counties does soil erosion adversely impact water quality?

63

The EIS/EIR contradicts itself, stating:

In cases of crop shifting, farmers may alter the application of pesticides and other chemicals which negatively affect water quality if allowed to enter area waterways. Since crop shifting would only affect currently utilized farmland, a significant increase in agricultural constituents of concern is not expected.

64

(EIS/EIR 3.2-30.) Would applications be altered, or remain the same? The EIS/EIR says both. In truth, due to the programmatic nature of this EIS/EIR, although it is a "project" not a "programmatic" document, one cannot know. This level of impact must be evaluated on a project-by-project basis, yet the Lead Agencies assertion that this is a "project" level EIS/EIR precludes additional CEQA and NEPA review.

The EIS/EIR concludes that water quality impacts in the buyer area would be less than significant, but provides no evidence or assurances whatsoever regarding the ultimate use of the purchased water would be. (EIS/EIR 3.2-41.) The EIS/EIR then considers only impacts resulting from increased crop irrigation, acknowledging that "[i]f this water were used to irrigate drainage impaired lands, increased irrigation could cause water to accumulate in the shallow root zone and could leach pollutants into the groundwater and potentially drain into the neighboring surface water bodies." (EIS/EIR 3.2-41.) The EIS/EIR then dismisses this possibility, assuming that buyers would only use water for "prime or important farmlands." Missing from this section is any analysis of water quality. What does the EIS/EIR consider to be prime or important farm lands? Do all such actual farms exhibit the same water quality in irrigated runoff? The EIS/EIR provides no assurances its assumptions will be met, and moreover, fails to explain what its assumptions actually are.

65

The EIS/EIR then again relies on an improper ratio comparison of the amount of transfer water potentially used in buyer areas, to the total amount of all water used in the buyers' areas. The EIS/EIR adds:

The small incremental supply within the drainage-impaired service areas would not be sufficient to change drainage patterns or existing water quality, particularly given drainage management, water conservation actions and existing regulatory compliance efforts already implemented in that area.

66

(EIS/EIR 3.2-41.) Again, however, any comparison ratio of transferred water to other irrigation simply provides no analysis of what water quality impacts any individual transfer would have

after application on any individual farm. Moreover, if indeed a transfer is responding to a shortage, the transfer amount could actually constitute all or a majority of water usage for a particular site. Allusion to “existing regulatory compliance efforts” only suggests that regulatory compliance is not already maintained in each and every potential buyer farmland. There is no reasonable dispute that return flows from irrigated agriculture can often compromise water quality standards, but the EIS/EIR simply brushes this impact aside.

66
con't

The EIS/EIR assumes that transfers may only occur during times of shortage (EIS/EIR 3.2-41), yet the proposed project itself is not so narrowly defined, and nothing in the Water Code limits transfers to circumstances where there has been a demonstrated shortfall in the buyer’s area. As a result of this open-ended project description, the true water quality impacts in the buyers’ areas are completely unknown.

67

iii. The EIS/EIR ignores numerous potentially significant sources of contamination to surface waters.

The EIS/EIR describes the existing environmental conditions of most of the water bodies within the potential seller areas to be impaired for numerous contaminants; and also provides sampling and monitoring data to show that in-stream exceedances of water quality objectives regularly occur. Yet, the EIS/EIR fails to ever discuss the impact of moving contaminated water from one source to another. For example, where a seller’s water is listed as impaired for certain contaminants, any movement of that water to another waterbody will simply spread this impairment. The EIS/EIR provides no information with which to determine the actual water quality of the seller’s water for any particular transfer, nor any evaluation or monitoring to determine whether moving these contaminants from one water to another would harm beneficial uses or exceed receiving water limits. The EIS/EIR should provide a more particularized review of potential contaminants and their impacts under the proposed project. For example, the EIS/EIR does not analyze water quality impacts from boron, but the BDCP EIS/EIR states, “large-scale, out-of-basin water transfers have reduced the assimilative capacity of the river, thereby exacerbating the water quality issues associated with boron.” (BDCP EIS/EIR at 8-40.) Similarly, dissolved oxygen, among other forms of contamination, pose regular problems pursuant to D-1641. These potentially significant impacts must be disclosed for public and agency review.

68

What selenium and boron loads in Mud Slough and other tributaries to the San Joaquin River may be expected from application of this water to western San Joaquin Valley lands?

The EIS/EIR fails to disclose whether changes in specific conductivity as a result of the program would result in significant impacts to water quality. First, as noted above, the EIS/EIR presents scattered baseline data, much of which appears to show ongoing EC exceedances, but the EIS/EIR fails to disclose what Bay-Delta EC standards are, and the frequency and magnitude of baseline exceedances. Against this backdrop, the EIS/EIR then admits that program transfers would increase EC by as much as 4.3 percent. (EIS/EIR 3.2-39.) The EIS/EIR fails to disclose

69

whether these regular EC increases would exacerbate baseline violation conditions. In addition, the EIS/EIR only presents analysis for one monitoring location, whereas the Bay-Delta plan contains EC limits for over a dozen monitoring locations.

69
con't

The EIS/EIR fails to disclose the extent to which program transfers could harm water quality by moving the "X2" location through the Delta. D-1641 specifies that, from February through June, the location of X2 must be west of Collinsville and additionally must be west of Chipps Island or Port Chicago for a certain number of days each month, depending on the previous month's Eight River Index. D-1641 specifies that compliance with the X2 standard may occur in one of three ways: (1) the daily average EC at the compliance point is less than or equal to 2.64 millimhos/cm; (2) the 14-day average EC is less than or equal to 2.64 millimhos/cm; or (3) the 3-day average Delta outflow is greater than or equal to the corresponding minimum outflow.

70

The EIS/EIR relies on an improper ratio approach to its impact evaluation of increased EC concentrations in the Delta Mendota Canal as a result of San Joaquin River diversions. (EIS/EIR 3.2-40.) The EIS/EIR admits that EC in the canal would increase as a result of these diversions, but fails to disclose by how much, or against what existing environmental conditions. Instead, the EIS/EIR compares the transfer amount, approximately 250 cfs, to the total capacity of the canal, about 4,000 cfs, to conclude that EC changes would not be significant. A comparison of the transfer amount to the total canal capacity simply provides no analysis of or information about EC concentrations.

71

The EIS/EIR fails to meaningfully evaluate potentially significant impacts to surface water quality as a result of groundwater substitution. First, the EIS/EIR provides an improper and misleading comparison, stating that

The amount of groundwater substituted for surface water under the Proposed Action would be relatively small compared to the amount of surface water used to irrigate agricultural fields in the Seller Service Area. Groundwater would mix with surface water in agricultural drainages prior to irrigation return flow reaching the rivers. Constituents of concern that may be present in the groundwater could enter the surface water as a result of mixing with irrigation return flows. Any constituents of concern, however, would be greatly diluted when mixed with the existing surface waters applied because a much higher volume of surface water is used for irrigation purposes in the Seller Service Area. Additionally, groundwater quality in the area is generally good and sufficient for municipal, agricultural, domestic, and industrial uses.

72

(EIS/EIR at 3.2-21.) The EIS/EIR's threshold of significance asks whether any water quality objective will be violated, and this must be measured at each discharge point. In turn, any farm that substitutes surface water irrigation for groundwater irrigation must be evaluated against this threshold. The EIS/EIR fails to provide any evidence to support its conclusion that the dilution of the groundwater runoff into surface waters would avoid any significant water quality

impacts. On one hand the EIS/EIR asserts that groundwater is of good quality, and on the other hand, asserts that the overall quality would improve as it is mixed with surface water irrigation runoff: *which* source provides the better water quality in this arrangement? It is widely recognized that irrigated agricultural return flows can transport significant contaminants to receiving water bodies. In addition, the EIS/EIR simply assumes that contaminated groundwater would not be pumped and applied to agricultural lands, despite the fact that groundwater extractions may mobilize PCE, TCE, and nitrate plumes under the City of Chico,³² and fails to disclose the existence of all hazardous waste plumes in the area of origin where groundwater substitution may occur. The assertion that “groundwater is generally good” throughout 6-10 counties is insufficient to provide any meaningful information against which to evaluate any particular transfer.

72
con't

For “non-Project” reservoirs, the EIS/EIR provides one piece of additional information: modeling projections showing various rates of drawdown in table 3.2-24. The EIS/EIR then concludes that because water quality in these reservoirs is generally good, the reductions would not result in any significant water quality impacts. Again, the EIS/EIR provides no evidence or analysis to support this bare conclusion. Nor does the EIS/EIR present the beneficial uses of Collins Lake, nor Dry Creek, downstream of Collins Lake (see Table 3.2-2). The EIS/EIR does note that Lake McClure, Hell Hole Reservoir, and Camp Far West Reservoir maintain beneficial uses for cold water habitat and wildlife habitat, but fails to evaluate whether these beneficial uses would be impacted. Dissolved oxygen rates will decrease with lower water levels, and any sediment-based contaminant concentration, will increase. And the fact that drawdowns increase in already-critical years only heightens the water quality concerns.

73

The EIS/EIR repeatedly relies on dilution as the solution, with no actual analysis or receiving water assimilative capacity, and no regulatory authority. It is well-established law that a discharger may receive a mixing zone of dilution to determine compliance with receiving water objectives if and only if the permittee has conducted a mixing zone study, submitted to a Regional Board or the State Board for approval. (See, e.g., *Waterkeepers N. Cal. v. AG Indus. Mfg.*, 2005 U.S. Dist. LEXIS 43006 [“A dilution credit is a limited regulatory exception that must be preceded by a site specific mixing zone study”]; Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, 65 Fed. Reg. 31682 (May 18, 2000), 31701 [“All waters . . . are subject to the criteria promulgated today. Such criteria will need to be attained at the end of the discharge pipe, unless the State authorizes a mixing zone.”]) The EIS/EIR entirely ignores Clean Water Act requirements for obtaining dilution credits, and, with no supporting evidence whatsoever, effectively and illegally grants dilution credits across the board. (See, EIS/EIR 3.2-31, 3.2-35, 3.2-36, 3.2-42, 3.2-59). For each instance in which the EIR/EIS wishes to apply dilution credit to its determination of whether water quality impacts will be significant, it must perform – with the approval of the State or Regional

74

³² http://www.ci.chico.ca.us/capital_project_services/NitrateArea2NPh3U1-3.asp

Water Board – a mixing zone study considering the impacted waterbody and the specific types and quantities of the proposed pollutant discharge(s). Short of that, each time the EIS/EIR relies on dilution as the solution, it fails to analyze whether any contaminant in any waterbody in any amount could protect beneficial uses or exceed receiving water standards. The more Project water goes to south-of-Delta agricultural users than to urban users, the higher would be their groundwater levels, the more contaminated the groundwater would be in the western San Joaquin Valley and the more the San Joaquin River would be negatively affected from contaminated seepage and tailwater by operation of the Project.

74
con't

c. Groundwater Resources.

The modeling efforts presented by the EIS/EIR fail to accurately capture the project's groundwater impacts. First, the SACFEM2013 simulations didn't evaluate the impacts of pumping the maximum annual amount proposed for each of the 10 years of the project. Second, because the groundwater modeling effort didn't include the most recent 11 years record, it appears to have missed simulating the most recent periods of groundwater substitution transfer pumping and other groundwater impacting events, such as recent changes in groundwater elevations and groundwater storage (DWR, 2014b), and the reduced recharge due to the recent periods of drought. Without taking the hydrologic conditions during the recent 11 years into account, the results of the SACFEM2013 model simulation may not accurately depict the current conditions or predict the effects from the proposed groundwater substitution transfer pumping during the next 10 years.

75

The Lead Agencies are making gross assumptions about the number, size, and behavior of all the surface water resources in the state, just to be able to coerce those assumptions into data that fits into the SACFEM2013 model. The assumptions are driving the modeling instead of the model (and science) driving accurate results. Appendix D is full of inaccurate statements and clear indications that this model is deficient. For example, it's advertised as a 3D model, but it's actually a collection of linked 2D models, and those are driven not by science, but by assumptions, e.g., the model can't calculate the location of the phreatic surface: it relies on assumptions and observations for that data, and that makes the model incapable of prediction.³³

76

The Draft EIS/EIR should provide the time-drawdown and distance-drawdown hydraulic characteristics for each groundwater substitution transfer well so that non-participant well owners can estimate and evaluate the potential impacts to their well(s) from well interference due to the pumping the groundwater substitution transfer well(s). This analysis is not present in the EIS/EIR.

77

³³ Mish (Exhibit C) pp. 3 and 4).

The EIS/EIR wrongly assumes that stream depletion impacts from pumping occur only downstream from the point on the stream closest to the pumping well.³⁴ Any monitoring of the effects of groundwater substitution pumping on surface or ground water levels, rates and areas of stream depletion, fisheries, vegetation and wildlife impacts, and other critical structures needs to cover a much wider area than what is needed for a direct surface water diversion.

78

The EIS/EIR doesn't compare the known groundwater quality problem areas with the SACFEM2013 simulated drawdowns to demonstrate that the proposed projects won't draw in or expand the areas of known poor water quality. The EIS/EIR analysis doesn't appear to consider the impacts to private well owners. Pumping done as part of the groundwater substitution transfer may cause water quality impacts from geochemical changes resulting from a lowering the water table below historic elevations, which exposes aquifer material to different redox conditions and can alter the mixing ratio of different quality aquifer zones being pumped. Changes in groundwater level can also alter the direction and/or rate of movement of contaminated groundwater plumes both horizontally and vertically, which may expose non-participating wells to contaminants they would not otherwise encounter.

79

The EIS/EIR fails to evaluate any changes in the rate and direction of inter-basin groundwater flow. Inter-basin groundwater flow may become a hidden long-term impact that increases the time needed for recovery of groundwater levels from groundwater substitution transfer pumping, and can extend the impact from groundwater substitution transfer pumping to areas outside of the groundwater substitution transfer seller's boundary.

80

Finally, the EIS/EIR should evaluate how Project transfers could add to the already high water table in the western San Joaquin Valley? Impacts from a higher water table could include increased groundwater contamination, lower flood resistance, greater erosion, and loss of suitability of certain parcels to particular land uses.

81

d. The SACFEM 2013 and CALSIM II Models are Inadequate.

The comments herein are based largely on the attached work of Dr. Custis (Exhibit A) and Dr. Mish (Exhibit C), and we request specific responses to these attached works. The EIR/EIS fails to accurately estimate environmental effects likely to occur during water transfers. The SACFEM2013 model used to predict groundwater resources is flawed by being based on poor technology that is simply not up to the task of accurate large-scale modeling.

82

The SACFEM2013 model is only partially predictive, in that key aquifer responses are entered as input data instead of being computed as predictive quantities. The model requires considerable data manipulation to be used, and these manipulations are necessarily subject to interpretation. The model description in the EIR/EIS presents no validation results that can be used to provide basic quality-assurance for the analyses used in the EIR/EIS. The model is not

³⁴ Custis (Exhibit A)

predictive in many important responses (as mentioned above), so its results are a reflection of past data (e.g., streamflows, phreatic surface location, etc.) instead of providing a predictive capability for future events. As described in previous sections, both the model and the input data contain gross over-simplifications that compromise the ability to provide accurate estimates of real-world responses of water resources. On page 19 of Appendix B, the reader is promised that model uncertainty will be described in Appendix D, but that promise is never delivered. This lack of any formal measure of uncertainty is not an unimportant detail, as it is impossible to provide accurate estimates of margin of error without some formal treatment of uncertainty. Any physical response asserted by the model's results has a margin of error of 100% if that response involves spatial scales smaller than a kilometer or more.

82
con't

The EIR/EIS makes little connection between groundwater extraction process modeled by SACFEM2013 and the all-too-real potential for surface subsidence, and the attendant irreversible loss of aquifer capacity. The problem is especially important during drought years, when groundwater substitution is most likely to occur. In a drought, the aquifer already entrains less groundwater than normal, so that additional stresses due to pumping are visited upon the aquifer skeleton. This is exactly the conditions required to cause loss of capacity and the risk of subsidence. Yet the EIR/EIS makes scant mention of these all-too-real problems, and no serious modeling effort is presented in the EIR/EIS to assess the risk of such environmental degradation.

83

In contrast to the shortcomings of the model, the Bureau/DWR's DTIPWT seeks information on interactions between groundwater pumping and groundwater/surface water supplies at various increments of less than one and two miles. (DTIPWT at Appendix B.) Where the EIS/EIR fails to provide information at a level of detail required by BOR and DWR to determine whether significant impacts to water supplies may occur, the EIS/EIR fails to provide information needed to support a full analysis of groundwater and surface water impacts, and fails to support its conclusions with evidence.

84

CalSim II is a highly complex simulation model of a complex system that requires significant expertise to run and understand. Consequently, only a few individuals concentrated in the Department of Water Resources, U.S. Bureau of Reclamation and several consulting firms understand the details and capabilities of the model. State Water Resources Control Board (SWRCB) staff cannot run the model. To the extent CalSim II is relied upon, the EIR/EIS must be transparent and clearly explain and justify all assumptions made in model runs. It must explicitly state when findings are based on post processing and when findings are based on direct model results. And results must include error bars to account for uncertainty and margin of safety.

85

As an optimization model, CalSim II is hardwired to assume perfect supply and perfect demand. The notion of perfect supply is predicated on the erroneous assumption that groundwater can always be obtained to augment upstream supply. However, the state and federal projects have

86

no right to groundwater in the unadjudicated Sacramento River basin. Operating under this assumption risks causing impacts to ecosystems dependent upon groundwater basins in the areas of origin. The notion of perfect demand is also problematic, as it cannot account for the myriad of flow, habitat and water quality requirements mandated by state and federal statutes. Perfect demand assumes water deliveries constrained only by environmental constraints included in the code. In other words, CalSim II never truly measures environmental harm beyond simply projecting how to maximize deliveries without violating the incorporated environmental constraints. As a monthly time-step model, CalSim II cannot determine weekly, daily or instantaneous effects; i.e., it cannot accurately simulate actual instantaneous or even weekly flows. It follows that CalSim II cannot identify real-time impacts to objectives or requirements. Indeed, DWR admits, "CalSim II modeling should only be used in 'comparative mode,' that is when comparing the results of alternate CalSim II model runs and that 'great caution should be taken when comparing actual data to modeled data.'"³⁵

86
con't

The Department of Civil Engineering University of California at Davis conducted a comprehensive survey of members of California's technical and policy-oriented water management community regarding the use and development of CalSim II in California. Detailed interviews were conducted with individuals from California's water community, including staff from both DWR and USBR (the agencies that created, own, and manage the model) and individuals affiliated with consulting firms, water districts, environmental groups, and universities.

The results of the survey, which was funded by the CalFed Science Program and peer-reviewed, should serve as a cautionary note to those who make decisions based on CalSim II. The report cites that in interviewing DWR and USBR management and modeling technical staff: "*Many interviewees acknowledge that using CALSIM II in a predictive manner is risky and/or inappropriate, but without any other agency-supported alternative they have no other option.*"

87

The report continues that: "All users agree that CalSim II needs better documentation of the model, data, inputs, and results. CalSim II is data-driven, and so it requires numerous input files, many of which lack documentation," and "There is considerable debate about the current and desirable state of CalSim II's calibration and verification," and "Its representation of the SWP and CVP includes many simplifications that raise concerns regarding the accuracy of results." "The model's inability to capture within-month variations sometimes results in overestimates of the volume of water the projects can export from the Sacramento- San Joaquin Bay-Delta and makes it seem easier to meet environmental standards than it is in real operations." The study concluded by observing, "CalSim II is being used, and will continue to be used, for many other types of analyses for which it may be ill-suited, including in absolute mode."

³⁵ Answering Brief for Plaintiff-Intervenor-Appellee California Department of Water Resources, Appeal from the United States District Court for the Eastern District of California, No. 1:09-cv-407, Case: 11-15871, 02/10/2012, ID: 8065113, page 15

In sum, the relied-upon models fail to accurately characterize the existing and future environment, fail to assess project-related impacts at a level of detail required for the EIS/EIR, and fail to support the EIS/EIR's conclusions regarding significance of impacts.

87
con't

e. Seismicity.

The EIS/EIR reasoning that because the projects don't involve new construction or modification of existing structures that there are no potential seismic impacts from the activity undertaken during the transfers is incorrect. The project area has numerous existing structures that could be affected by the groundwater substitution transfer pumping, specifically settlement induced by subsidence. Although the seismicity in the Sacramento Valley is lower than many areas of California, it's not insignificant. There is a potential for the groundwater substitution transfer projects to increase the impacts of seismic shaking because of subsidence causing additional stress on existing structures.

88

The EIS/EIR fails to inform the public through any analysis of the potential effects excessive groundwater pumping in the seller area may have on the numerous known earthquake faults running through and about the north Delta area, and into other regions of Northern California. As recently detailed in a paper published by a well-respected British scientific journal, "[u]plift and seismicity driven by groundwater depletion in central California," excessive pumping of groundwater from the Central Valley might be affecting the frequency of earthquakes along the San Andreas Fault, and raising the elevation of local mountain belts. The research posits that removal of groundwater lessens the weight and pressure on the Earth's upper crust, which allows the crust to move upward, releasing pressure on faults, and rendering them closure to failure. Long-Term Water Transfer Agreements have impacted the volume of groundwater extracted as farmers are able to pump and then forego surface water in exchange for money. The drought has exacerbated the need for water in buyer areas, and depleted the natural regeneration of groundwater supply due to the scarcity of rain.

89

Detailed analyses of this seismicity and focal mechanisms indicate that active geologic structures include blind thrust and reverse faults and associated folds (e.g., Dunnigan Hills) within the Coast Ranges-Sierran Block ("CRSB") boundary zone on the western margin of the Sacramento Valley, the Willows and Corning faults in the valley interior, and reactivated portions of the Foothill fault system. Other possibly seismogenic faults include the Chico monocline fault in the Sierran foothills and the Paskenta, Elder Creek and Cold Fork faults on the northwestern margin of the Sacramento Valley.³⁶

f. Climate Change.

³⁶ http://archives.datapages.com/data/pacific/data/088/088001/5_ps0880005.htm (Custis, Exhibit A)

The gross omissions and errors within the climate change analysis of the EIS/EIR fail to accurately describe the existing climatological conditions into which the project may be approved, fail to accurately describe the diminution of water and natural resources over recent and future years as a result of climate change, fail to integrate these changing circumstances into any future baseline or cumulative conditions, and fail to completely analyze or support the EIS/EIR conclusions regarding the project's potentially significant impacts.

90

i. The EIS/EIR Completely Fails to Incorporate Any Climate Change Information into its Analysis.

The EIS/EIR provides no analysis whatsoever of the extent to which climate change will affect the EIS/EIR assumptions regarding water supply, water quality, groundwater, or fisheries. Despite providing an overview of extant literature and study, all agreeing that California temperatures have been, are, and will continue to be rising, the entire EIS/EIR analysis of climate change interactions with the proposed project states:

As described in the Section 3.6.1.3, changes to annual temperatures, extreme heat, precipitation, sea level rise and storm surge, and snowpack and streamflow are expected to occur in the future because of climate change. Because of the short-term duration of the Proposed Action (10 years), any effects of climate change on this alternative are expected to be minimal. Impacts to the Proposed Action from climate change would be less than significant.

91

(EIS/EIR 3.6-21 to 3.6-22; similarly, the EIS/EIR Fisheries chapter at 3.7-23 states: "Future climate change is not expected to alter conditions in any reservoir under the No Action/No Project Alternative because there will be limited climate change predicted over the ten year project duration (see Section 3.6, Climate Change/Greenhouse Gas).")

First, this "analysis" seriously misstates extant science by claiming that climate change impacts "are expected to occur in the future." The effects of climate change are affecting California's water resources at present, and have been for years. A 2007 DWR fact sheet, for example, states that "[c]limate change is already impacting California's water resources."³⁷ A more recent 2013 report issued by the California Office of Environmental Health Hazard Assessment states that "[m]any indicators reveal already discernible impacts of climate change, highlighting the urgency for the state, local government and others to undertake mitigation and adaptation strategies."³⁸ The report states that:

³⁷ <http://www.water.ca.gov/climatechange/docs/062807factsheet.pdf> (Exhibit AA)

³⁸ <http://oehha.ca.gov/multimedia/epic/pdf/ClimateChangeIndicatorsSummaryAugust2013.pdf> (Exhibit BB)

Climate is a key factor affecting snow, ice and frozen ground, streams, rivers, lakes and the ocean. Regional climate change, particularly warming temperatures, have affected these natural physical systems.

From October to March, snow accumulates in the Sierra Nevada. This snowpack stores much of the year's water supply. Spring warming releases the water as snowmelt runoff. Over the past century, spring runoff to the Sacramento River has decreased by 9 percent. Lower runoff volumes from April to July may indicate: (1) warmer winters, during which precipitation falls as rain instead of snow; and (2) earlier springtime warming.

Glaciers are important indicators of climate change. They respond to the combination of winter snowfall and spring and summer temperatures. Like spring snowmelt, the melting of glaciers supplies water to sustain flora and fauna during the warmer months. Glacier shrinkage results in earlier peak runoff and drier summer conditions—changes with ecological impacts—and contributes to sea level rise.

With warming temperatures over the past century, the surface area of glaciers in the Sierra Nevada has been decreasing. Losses have ranged from 20 to 70 percent.

...

Over the last century, sea levels have risen by an average of 7 inches along the California coast.

...

Lake waters have been warming at Lake Tahoe, Lake Almanor, Clear Lake and Mono Lake since the 1990s. Changes in water temperature can alter the chemical, physical and biological characteristics of a lake, leading to changes in the composition and abundance of organisms that inhabit it.

...

Snow-water content—the amount of water stored in the snowpack—has declined in the northern Sierra Nevada and increased in the southern Sierra Nevada, likely reflecting differences in precipitation patterns.

Reduced runoff means less water to meet the state's domestic, agricultural, hydroelectric power generation, recreation and other needs. Cold water fish habitat, alpine forest growth and wildfire conditions are also impacted.

In addition, climate change threatens to reduce the size of cold water pools in upstream reservoirs and raise temperatures in upstream river reaches for Chinook, and climate change will reduce Delta outflows and cause X2 to migrate further east and upstream. (See, BDCP at 5.B-310, "Delta smelt may occur more frequently in the north Delta diversions area under future climate conditions if sea level rise [and reduced Sacramento River inflow below Freeport] induces movement of the spawning population farther upstream than is currently typical.")

91
con't

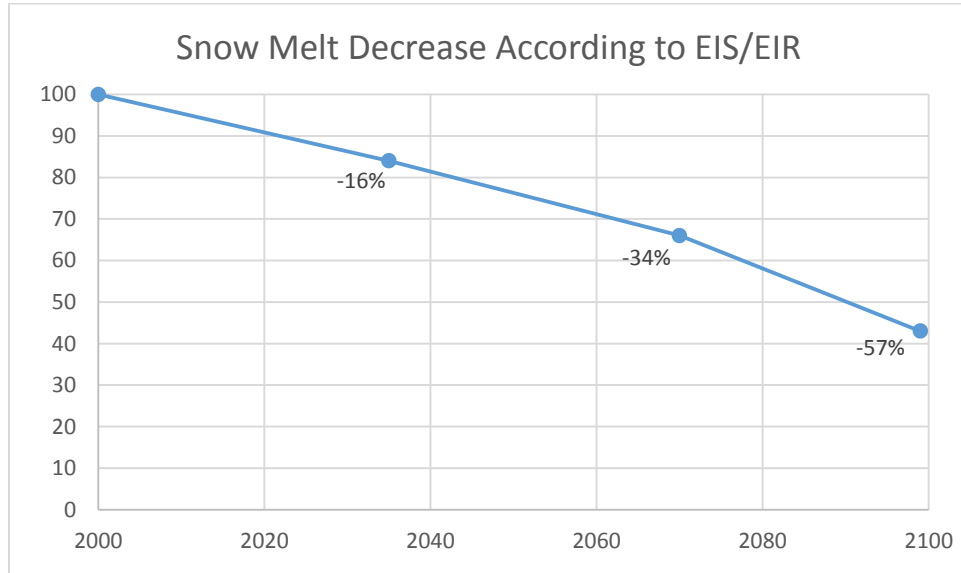
92

And, the EIS/EIR “[f]igure 3.6-1 shows the climate change area of analysis,” excluding all of the Sierra Nevadas except those within Placer County, and excluding all of Sacramento County. (EIS/EIR 3.6-2.)

93

Instead of accounting for these factors in its environmental analysis, the EIS/EIR takes the obtuse approach of relying only on “mid-century” and year 2100 projections to cast climate change as a “long-term” and “future” problem. (See, e.g., EIS/EIR 3.6-10.) First, the U.S. Department of Interior and the California Resources Agency clearly possess better information regarding past, present, and on-going changes to water supplies as a result of climate change than presented in the EIS/EIR, and such information must be incorporated. Second, even the information presented could be more fully described, and where appropriate, extrapolated, to support any meaningful analysis. Presumably these studies and reports provide more than one or two future data points, and instead show curved projections over time. For example, the EIS/EIR states that “[i]n California, snow water equivalent (the amount of water held in a volume of snow) is projected to decrease by 16 percent by 2035, 34 percent by 2070, and 57 percent by 2099, as compared to measurements between 1971 and 2000.” (EIS/EIR 3.6-11.) Are these the only three data points provided by the study? Unless the EIS/EIR assumes that the entire percent decreases will be felt exclusively in years 2035, 2070, and 2099, these data should be extrapolated, as follows, to approximate the snow melt decrease over the project term:

94



From this it is apparent that snow melt will decrease over the project term. This provides just one example, but the EIS/EIR itself should include meaningful analysis of climate change effects upon annual temperatures, extreme heat, precipitation, evaporation, sea level rise, storm surge, snowpack, groundwater, stream flow, riparian habitat, fisheries, and local economies over the life of the project.

Nine years ago, in 2005, then California Governor Arnold Schwarzenegger stated “[w]e know the science. We see the threat. And we know the time for action is now.”³⁹ Here, in contrast, the EIS/EIR says, let’s wait another ten years. This is simply unacceptable.

94
Con't

ii. The EIS/EIR Completely Ignores Increased GHG Emission in the Buyer Areas.

The EIS/EIR impact evaluation of increased GHG emissions in the buyer areas consists of a series of incomplete characterizations and unsupported conclusion. First, the EIS/EIR states: “Water transfers to agricultural users . . . could temporarily reduce the amount of land idled relative to the No Action/No Project Alternative.” (EIS/EIR 3.6-22.) This is in part true, but understates the impact, as there is no guarantee that the newly-supported land-uses would either be temporary, or agricultural. Second, the EIS/EIR states that “farmers may also pump less groundwater for irrigation, which would reduce emissions from use of diesel pumps.” This too is entirely speculative, and also contradicts the earlier implication that transfer water would only go to idled cropland. Third, the EIS/EIR summarily concludes that, “[t]he total amount of agricultural activity in the Buyer Service Area relative to GHG emissions would not likely change relative to existing conditions and the impact would be less than significant.” This again contradicts the EIS/EIR earlier statement that a water transfer could result in less idled cropland; and also defies logic and has no support in fact to suggest that increasing provision of a scarce resource would not induce some growth. At a bare minimum, the EIS/EIR should use its own estimated GHG reduction rates achieved as a result of newly idled cropland in the sellers’ service area as means of measuring the estimated GHG emission increases caused by activating idled cropland in the buyers’ service areas.

95

iii. The EIS/EIR Threshold of Significance for GHG Emissions is Inappropriate.

The EIS/EIR reviews nearly a dozen relevant, agency-adopted, thresholds of significance for GHG emissions, and chooses to select the single threshold that sits a full order of magnitude above all others. The chosen threshold is unsupported in fact or law, and creates internal contradiction within the EIS/EIR. The CEQA Guidelines state that:

A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:

...

Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

96

³⁹ United Nations World Environment Day Conference, June 1, 2005, San Francisco; see also, Executive Order S-3-05.

The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.

(CEQA Guidelines § 15064.4.) Numerous Air Districts within the affected area have established GHG thresholds of significance that the EIS/EIR improperly chooses not to apply. The EIS/EIR argues that these Air District thresholds are meant to apply to stationary sources, an exercise that “would be overly onerous and is not recommended.” (EIS/EIR 3.6-18.) This must be rejected. The EIS/EIR fails to provide any reason to believe that Air District regulations would not and should not be applied to activities occurring within each respective Air District. The CEQA Guidelines require the lead agency to use “a threshold of significance that the lead agency determines applies to the project;” here, the lead agency has not determined that the local Air District thresholds do not apply to the project activities; rather, it has determined that this evaluation would be too onerous. So instead, the EIS/EIR chooses to apply the threshold of significance adopted by the Antelope Valley Air District and the Mojave Desert Air District, each of which would clearly have latitude to adopt lax air quality thresholds owing to the lack of use intensity within each district. With (hopefully) no transfer water heading to the Mojave Desert, the lead agency has no basis to determine that the Mojave Desert Air District’s thresholds of significance “applies to the project.” The EIS/EIR also notes that the same threshold has been adopted by USEPA for Clean Air Act, Title V permits. But the Title V standard also applies to stationary sources, which the EIS/EIR says are inapplicable. Does any project element require a Title V permit? In short, the EIS/EIR fails to evaluate the project against any threshold of significance that was adopted either (1) for the benefit of an individual air district in which project activities would occur, or (2) for the benefit of regional or statewide GHG emission goals. The EIS/EIR’s unsupported grab of the most lax standard it could find, with no bearing on the project whatsoever, must be rejected.

96
Con't

g. Fisheries.

AquAlliance shares the widely held view that operation of the Delta export pumps is the major factor causing the Pelagic Organism Decline (“POD”) and in the deteriorating populations of fall-run Chinook salmon. In 2012, the State Water Resources Control Board received word in early December that the Fall Midwater Trawl surveys for September and October showed horrendous numbers for the target species. The indices for longfin smelt, splittail, and threadfin shad reveal the lowest in history.⁴⁰ Delta smelt, striped bass, and American shad numbers remain close to their lowest levels (*Id*). The 2013 indices were even worse and the 2014 indices are also abysmal (*Id*). Tom Cannon declared in June 2014 that water transfers have been and will remain devastating to Delta smelt during dry years.⁴¹ “In my opinion, the effect of Delta operations this summer [2014] of confining smelt to the Sacramento Deepwater ship channel

97

⁴⁰ <http://www.dfg.ca.gov/delta/data/fmwt/Indices/index.asp>. (Exhibit CC)

⁴¹ Cannon 2014. Declaration for Preliminary Injunction in AquAlliance and CSPA v. United State Bureau of Reclamation. (Exhibit DD)

upstream of Rio Vista due to adverse environmental conditions in the LSZ that will be exacerbated by the Transfers, both with and without relaxed outflow standards, with no evidence that they can emerge from the ship channel in the fall to produce another generation of smelt, is significant new information showing that the Transfers will have significant adverse impacts on Delta smelt.” Mr. Cannon’s October report observes that “habitat conditions have been very poor and the Delta smelt population is now much closer to extinction with the lowest summer index on record.”

97
con't

As Mr. Cannon’s comments highlight, attached and fully incorporated as though stated in their entirety, herein, the EIS/EIR has inaccurately characterized the existing environment, including the assumption that delta smelt are not found in the Delta in the summer transfer season, when in fact during dry and critical years when transfers would occur, most if not all delta smelt are found in the Delta; and fails to fully assess the significant and cumulative effects to listed species in multiyear droughts when listed fish are already under maximum stress, which effects could be avoided by limiting transfers in the second or later years of drought.

The 2015-2024 Water Transfer Program would exacerbate pumping of fresh water from the Delta, which has already suffered from excessive pumping over the last 12 years. Pumped exports cause reverse flows to occur in Old and Middle Rivers and can result in entrainment of fish and other organisms in the pumps. Pumping can shrink the habitat for Delta smelt (*Hypomesus transpacificus*) as well, since less water flows out past Chipps Island through Suisun Bay, which Delta smelt often prefer.

The EIS/EIR should also evaluate whether Project effects could alter stream flows necessary to maintain compliance with California Fish and Game Code Section 5937. A recent study issued from the University of California, Davis, documents hundreds of dams failing to maintain these required flows.⁴² Both the timing and volumes of transfer water must be considered in conjunction with 5937 flows.

98

h. Vegetation and Wildlife.

i. The EIS/EIR reaches faulty conclusion for Project and cumulative impacts.

Section 3.8.5, *Potentially Significant Unavoidable Impacts*, declares that, “None of the alternatives would result in potentially significant unavoidable impacts on natural communities, wildlife, or special-status species.” Regarding cumulative biological impacts of the proposed Project (Alternative 2), the EIS/EIR concludes, “Long-term water transfers would not be cumulatively considerable with the other projects because each of the projects would have little or no impact flows [sic] in rivers and creeks in the Sacramento River watershed or the vegetation and wildlife resources that depend on them,” (p. 3.8-92). This is a conclusory

99

⁴² https://watershed.ucdavis.edu/files/biblio/BioScience-2014-Grantham-biosci_biu159.pdf. (Exhibit EE)

statement without supporting material to justify it, only modeling that has been demonstrated in our comments as extremely deficient.

The EIS/EIR actually discloses there are very likely many significant impacts from the proposed project on terrestrial and aquatic habitat and species. Examples from Chapter 3.8 include:

- “The lacustrine natural communities in the Seller Service Area that would be potentially impacted by the alternatives include the following reservoirs: Shasta, Oroville, New Bullards Bar, Camp Far West, Collins, Folsom, Hell Hole, French Meadows, and McClure,” (p. 3.8-10)
- “The potential impacts of groundwater substitution on natural communities in upland areas was considered potentially significant if it resulted in a consistent, sustained depletion of water levels that were accessible to overlying communities (groundwater depth under existing conditions was 15 feet or less). A sustained depletion would be considered to have occurred if the groundwater basin did not recharge from one year to the next,” (p. 3.8-33).
- “In addition to changing groundwater levels, groundwater substitution transfers could affect stream flows. As groundwater storage refills during and after a transfer, it could result in reduced availability of surface water in nearby streams and wetlands,” (p. 3.8-33).

99
con't

It should also be noted that the 2008 U.S. Fish and Wildlife Service (USFWS) and 2009 National Marine Fisheries Service (NMFS) biological opinions did not evaluate potential impacts to in-stream flow due to water transfers involving groundwater substitution. How these potential impacts may adversely affect biological resources in the areas where groundwater pumping will occur, including listed species and their habitat, were also not included.⁴³ To reach the conclusion that the Project “would not be cumulatively considerable with the other projects” based only on modeling fails to provide the public with meaningful analysis of probable impacts.

100

ii. The 2015-2024 Water Transfer Program has potential adverse impacts for the giant garter snake, a threatened species.

As the Lead and Approving Agencies are well aware, the purpose of the ESA is to conserve the ecosystems on which endangered and threatened species depend and to conserve and recover those species so that they no longer require the protections of the Act. 16 U.S.C. § 1531(b), ESA § 2(b); 16 U.S.C. § 1532(3), ESA §3(3) (defining “conservation” as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary”). “[T]he ESA was enacted not merely to forestall the extinction of species (i.e., promote species

101

⁴³ California Department of Fish and Game. 2013. COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT (2013 DRAFT EA) AND FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOR THE 2013 CENTRAL VALLEY PROJECT (CVP) WATER, p.4. (Exhibit FF)

survival), but to allow a species to recover to the point where it may be delisted.” *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1069 (9th Cir. 2004). To ensure that the statutory purpose will be carried out, the ESA imposes both substantive and procedural requirements on all federal agencies to carry out programs for the conservation of listed species and to insure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536. See *NRDC v. Houston*, 146 F.3d 1118, 1127 (9th Cir. 1998) (action agencies have an “affirmative duty” to ensure that their actions do not jeopardize listed species and “independent obligations” to ensure that proposed actions are not likely to adversely affect listed species). To accomplish this goal, agencies must consult with the Fish and Wildlife Service whenever their actions “may affect” a listed species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). Section 7 consultation is required for “any action [that] may affect listed species or critical habitat.” 50 C.F.R. § 402.14. Agency “action” is defined in the ESA’s implementing regulations to “mean all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States.” 50 C.F.R. § 402.02.

101
con't

The giant garter snake (“GGS”) is an endemic species to Central Valley California wetlands. (Draft Recovery Plan for the Giant Garter Snake (“DRP”) 1). The giant garter snake, as its name suggests, is the largest of all garter snake species, not to mention one of North America’s largest native snakes, reaching a length of up to 64 inches. Female GGS tend to be larger than males. GGS vary in color, especially depending on the region, from brown to olive, with white, yellow, or orange stripes. The GGS can be distinguished from the common garter snake by its lack of red markings and its larger size. GGS feed primarily on aquatic fish and specialize in ambushing small fish underwater, making aquatic habitat essential to their survival. Females give birth to live young from late July to early September, and brood size can vary from 10 to up to 46 young. Some studies have suggested that the GGS is sensitive to habitat change in that it prefers areas that are familiar and will not typically travel far distances.

102

If fallowing (idling) occurs, there will be potentially significant impacts to GGS and this is acknowledged on page 3.8-69: “Giant garter snakes have the potential to be affected by the Proposed Action through cropland idling/shifting and the effects of groundwater substitution on small streams and associated wetlands.” The Lead Agencies use language found in a 1997 Programmatic Biological Opinion (as well as the 1999 Draft Recovery Plan) to explain that GGS depend on more than rice fields in the Sacramento Valley. “The giant garter snake inhabits marshes, sloughs, ponds, small lakes, low gradient streams, other waterways and agricultural wetlands such as irrigation and drainage canals and rice fields, and the adjacent uplands. Essential habitat components consist of (1) adequate water during the snake's active period, (early spring through mid-fall) to provide a prey base and cover; (2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat; (3)

upland habitat for basking, cover, and retreat sites; and (4) higher elevation uplands for cover and refuge from flood waters.”⁴⁴

Even with the explanation above, that clearly illustrates the importance of upland habitat to GGS, the EIS/EIR concludes that idling or shifting upland crops “[a]re not anticipated to affect giant garter snakes, as they do not provide suitable habitat for this species” (p. 3.8-69). The EIS/EIR is internally contradictory and fails to provide any evidence to support its conclusion that GGS will not be impacted by idling or shifting crops in upland areas. In support of the importance of upland acreage to GGS, a Biological Opinion for Gray Lodge found that, “Giant garter snakes also use burrows as refuge from extreme heat during their active period. The Biological Resources Division (BRD) of the USGS (Wylie et al_ 1997) has documented giant garter snakes using burrows in the summer as much as 165 feet (50. meters) away from the marsh edge. Overwintering snakes have been documented using burrows as far as 820 feet (250 meters) from the edge of marsh habitat,” (1998).⁴⁵

102
con't

More pertinent background information that is lacking in the EIS/EIR is found in the Bureau’s Biological Assessment for the 2009 DWB that disclosed that one GGS study in Colusa County revealed the “longest average movement distances of 0.62 miles, with the longest being 1.7 miles, for sixteen snakes in 2006, and an average of 0.32 miles, with the longest being 0.6 miles for eight snakes in 2007.” (BA at p.16) However, in response to droughts and other changes in water availability, the GGS has been known to travel up to 5 miles in only a few days, and the EIS/EIR should evaluate impacts to GGS survival and reproduction under such extreme conditions

As the EIS/EIR divulges, flooded rice fields, irrigation canals, streams, and wetlands in the Sacramento Valley can be used by the giant garter snake for foraging, cover and dispersal purposes. The Bureau’s 2009 and 2014 Biological Assessments acknowledge the failure of the Bureau and DWR to complete the Conservation Strategy that was a requirement of the 2004 Biological Opinion (BA at p. 19-20). Research was finally initiated “since 2009,” but is nowhere near the projected 10-year completion date. The unnecessary delay hasn’t daunted the agencies pursuit of transfers that affect GGS despite the absence of the following information that the U.S. Fish and Wildlife Service has explicitly required since the 1990s:

- GGS distribution and abundance.
- Ten years of baseline surveys in the Sacramento Valley
- Five years of rice land idling surveys in the Sacramento Valley Recovery Unit and the Mid-Valley Recovery Unit.

103

⁴⁴ Programmatic Consultation with the U.S. Army Corps of Engineers
404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California

⁴⁵ http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=15453

This Project and all North-to-South and North-to-North transfers should be delayed until the Bureau and DWR have completed the Conservation Strategy they have known about for at least a decade and a half.

103
con't

The Bureau and DWR continue to allow an increase in acres fallowed (2013 *Draft Technical Information for Preparing Water Transfer Proposals* ("DTIPWTP")) since the 2010/2011 *Water Transfer Program* first proposed to delete or modify other mitigation measures previously adopted as a result of the Environmental Water Account ("EWA") EIR process. The EWA substantially reduced significant impacts for GGS, but without showing that they are infeasible, the Bureau and DWR proposed to delete the 160 acre maximum for "idled block sizes" for rice fields left fallow rather than flooded and to substitute for it a 320 acre maximum. (See 2003 Draft EWA EIS/EIR, p. 10-55; 2004 Final EWA EIS/EIR, Appendix B, p. 18, Conservation Measure # 4.) There was no evidence in 2010 to support this change nor has there been any provided to the present time. In light of the agencies failure to complete the required Conservation Strategy mentioned above and the data gathered in the Colusa County study, how can the EIS/EIR suggest (although it is not presented in the document, but in the agencies *Draft Technical Information for Preparing Water Transfer Proposals* papers) that doubling the fallowing acreage is in any way biologically defensible? The Lead and Approving Agencies additionally propose to delete the EWA mitigation measure excluding Yolo County east of Highway 113 from the areas where rice fields may be left fallow rather than flooded, except in three specific areas.⁴⁶ (See 2004 Final EWA EIS/EIR, Appendix B, p. 18, Conservation Measure # 2.) What is the biological justification for this change and where is it documented? What are the impacts from this change?

104

Deleting these mitigation measures required by the EWA approval would violate NEPA and CEQA's requirements that govern whether, when, and how agencies may eliminate mitigation measures previously adopted under NEPA and CEQA.

Additionally, the 2010/2011 *Water Transfer Program* failed to include sufficient safeguards to protect the giant garter snake and its habitat. The EA for that two-year project concluded, "The frequency and magnitude of rice land idling would likely increase through implementation of water transfer programs in the future. Increased rice idling transfers could result in chronic adverse effects to giant garter snake and their habitats and may result in long-term degradation to snake populations in the lower Sacramento Valley. In order to avoid potentially significant adverse impacts for the snake, additional surveys should be conducted prior to any alteration in water regime or landscape," (p. 3-110). To address this significant impact the Bureau proposed relying on the 2009 Drought Water Bank ("DWB") Biological Opinion, which was a one-year BO. Both the expired 2009 BO and the 2014 BO highlighted the Bureau and DWR's avoidance of

105

⁴⁶ USBR and DWR, 2013. *Draft Technical Information for Preparing Water Transfer Proposals*.

meeting federal and state laws stating, “This office has consulted with Reclamation, both informally and formally, seven times since 2000 on various forbearance agreements and proposed water transfers for which water is made available [“for delivery south of the delta” is omitted in 2014] by fallowing rice (and other crops) or substituting other crops for rice in the Sacramento Valley. Although transfers of this nature were anticipated in our biological opinion on the environmental Water Account, that program expired in 2007 and, to our knowledge, no water was ever made available to EWA from rice fallowing or rice substitution. The need to consult with such frequency on transfers involving water made available from rice fallowing or rice substitution suggests to us a need for programmatic environmental compliance documents, including a programmatic biological opinion that addresses the additive effects on giant garter snakes of repeated fallowing over time, and the long-term effects of potentially large fluctuations and reductions in the amount and distribution of rice habitat upon which giant garter snakes in the Sacramento Valley depend,” (p.1-2). And here we are in late 2014 still without that programmatic environmental compliance that is needed under the Endangered Species Act.

105
con't

If the Project is or isn't approved, we propose that the Lead and Approving Agencies commit to the following conservation recommendations from the 2014 Biological Opinion by changing the word “should” to “shall”:

1. Reclamation should [shall] assist the Service in implementing recovery actions identified in the Draft Recovery Plan for the Giant Garter Snake (U.S. Fish and Wildlife Service 1999) as well as the final plan if issued during the term of the proposed action.
2. Reclamation should [shall] work with the Service, Department of Water Resources, and water contractors to investigate the long-term response of giant garter snake individuals and local populations to annual fluctuations in habitat from fallowing rice fields.
3. Reclamation should [shall] support the research goals of the Giant Garter Snake Monitoring and Research Strategy for the Sacramento Valley proposed in the Project Description of this biological opinion.
4. Reclamation should [shall] work with the Service to create and restore additional stable perennial wetland habitat for giant garter snakes in the Sacramento Valley so that they are less vulnerable to market-driven fluctuations in rice production. The CVPIA (b)(1)other and CVPCP conservation grant programs would be appropriate for such work.

- iii. The EIS/EIR fails to accurately describe the uppermost acreage that could impact GGS.

Page 3.8-69 claims that the Proposed Action “[c]ould idle up to a maximum of approximately 51,573 acres of rice fields,” but the Lead and Approving Agencies are well aware that past

106

transfers have or could have fallowed much more acreage and that 20 percent is allowed per county under the *Draft Technical Information for Preparing Water Transfer Proposals* last written in 2013. Factual numbers for proposed water transfers that included fallowing and groundwater substitution in the last 25 years should be disclosed in a revised and re-circulated draft EIS/EIR. The companion data that should also be presented would disclose how much water was actually transferred each year by seller and delineated by acreage of land fallowed and/or groundwater pumped. This information should not only be disclosed in the EIS/EIR, but it should also be readily available on the Bureau's web site. In addition, the EIS/EIR should cease equivocating with usage of "could" and "approximately" and select and analyze a firm maximum acreage of idled land, which would provide the public with the ability to consider the impacts from a most significant impact scenario.

106
con't

"In 1992, Congress passed the Central Valley Project Improvement Act (Act, or CVPIA), which amended previous authorizations of the California Central Valley Project (CVP) to include fish and wildlife protection, restoration, enhancement, and mitigation as project purposes having equal priority with power generation, and irrigation and domestic water uses." ⁴⁷ The *2015-2024 Water Transfer Program* fails to take seriously the equal priority for, "[f]ish and wildlife protection, restoration, enhancement, and mitigation."

i. Economics.

Our comments are based largely upon the *EcoNorthwest* report produced for AquAlliance, attached and fully incorporated as though stated in their entirety, herein. Once again, the lack of relevant baseline information and discrete project description thwarts any ability to effectively analyze the project, and the lack of any market analysis of water prices, and prices for agricultural commodities, relegates the EIS/EIR to unsupported conclusions about the likely future frequency and amounts of water transfers and their environmental and economic consequences. The EIS/EIR further relies on obsolete data for certain key variables and ignores other relevant data and information. For example, the analysis assumes a price for water that bears no resemblance to the current reality. Growers and water sellers and buyers react to changing prices and market conditions, but the EIS/EIR is silent on these forces and how they would influence water transfers.

107

The EIS/EIR underestimates negative impacts on the regional economy in the sellers' area, acknowledging that negative economic impacts would be worse if water transfers happen over consecutive years, but estimating impacts only for single-year transfers, ignoring the data on the frequency of recent consecutive-year transfers.

108

As discussed, below, the EIS/EIR's inadequate evaluation and avoidance of subsidence will result in additional unaccounted-for economic costs. Injured third parties would bear the costs

109

⁴⁷ U.S. Department of Interior. *10 Year of Progress: Central Valley Project Improvement Act 1993-2002*. <http://www.waterrights.ca.gov/baydelta/docs/exhibits/SLDM-EXH-03B.pdf> (Exhibit GG)

of bringing to the sellers' attention harm caused by groundwater pumping, and the ability of parties to resolve disputes with compensation is speculative. The EIS/EIR is silent on these and other ripple cost effects of subsidence.

109
con't

The EIS/EIR ignores the environmental externalities and economic subsidies that water transfers support. The EIS/EIR lists Westlands Water District as one of the CVP contractors expressing interest in purchasing transfer water. The environmental externalities caused by agricultural production in Westlands WD are well documented, as are the economic subsidies that support this production. To the extent that the water transfers at issue in the EIS/EIR facilitate agricultural production in Westlands WD, they also contribute to the environmental externalities and economic subsidies of that production, but the EIS/EIR is silent on these environmental and economic consequences of the water transfers.

110

j. Cultural Resources.⁴⁸

The EIS/EIR fails to adequately provide evidence that water transfers, which draw down reservoir surface elevations at Central Valley Project (CVP) and State Water Project (SWP) reservoirs beyond historically low levels, could not potentially adversely affect cultural resources. The EIS/EIR states that the potential of adverse impacts to cultural resources does exist:

3.13.2.4 Alternative 2: Full Range of Transfers (Proposed Action)

Transfers that draw down reservoir surface elevations at CVP and SWP reservoirs beyond historically low levels could affect cultural resources. The Proposed Action would affect reservoir elevation in CVP and SWP reservoirs and reservoirs participating in stored reservoir water transfers. Water transfers have the potential to affect cultural resources, if transfers result in changing operations beyond the No Action/No Project Alternative. Reservoir surface water elevation changes could expose previously inundated cultural resources to vandalism and/or increased wave action and erosion (p. 3.13-15).

111

This passage states that the Long Range Water Transfers undertaking may have the potential to affect cultural resources if the water transfers lowered reservoir elevations enough to expose cultural resources. The first step for analysing this would require conducting research for past studies and reports with site specific data for the CVP and SWP reservoirs. The EIS/EIR states:

3.13.1.3 Existing Conditions

This section describes existing conditions for cultural resources within the area of analysis. *All data regarding existing conditions were collected through an examination of archival and current literature pertinent to the area of analysis.* Because action

⁴⁸ Comments in this section are based on the work of Bill Helmer, prepared for AquAlliance on the 2014 Long-Term Water Transfers EIS/EIR

alternatives associated with the project do not involve physical construction-related impacts to cultural resources, no project specific cultural resource studies were conducted in preparation of this Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (EIS/EIR, p. 3.13-13, emphasis added).

111
con't

However, there are no references listed for all the data collected which were "pertinent to the area of analysis." Also, the EIS/EIR states on p. 3.13-15 cited above that the lowering of the reservoir water elevations due to water transfers may affect cultural resources. Obviously, such an impact does not need to "[i]nvolve physical construction-related impacts to cultural resources," so this rationale for not conducting specific cultural resource studies contradicts its own assertion.

Instead of conducting a cultural resources study which locates historic resources and traditional cultural properties (with the use of a contemporary Native American ethnological study), and then assesses the amount of project-related water elevation changes which may affect these resources, the EIS/EIR merely stated that their Transfer Operations Model was used to show that the project's "Impacts to cultural resources at Shasta, Oroville and Folsom reservoirs would be less than significant," (3.13-15, 3.13-16). A chart on page 13.3-15 shows that the proposed project is projected to decrease reservoir elevations at the "critical" level in September by 0.5 ft. at Shasta Reservoir, 2.4 ft. at Lake Oroville, and 1.5 ft. at Folsom Reservoir. (There is no source for this chart, and the reader has to guess that it may be from the Transfer Operations Model. The definitions of the various categories in the chart are also unexplained).

Based upon the findings shown on the chart, it is stated:

112

The reservoir surface elevation changes under the Proposed Action for these reservoirs would be within the normal operations and would not be expected to expose previously inundated cultural resources to vandalism or increased wave action and wind erosion. Impacts to cultural resources at Shasta, Oroville and Folsom reservoirs would be less than significant (p. 3.13-15).

However, there is no evidence to show that a project-related reservoir drop of 2.4 ft. at Lake Oroville will not uncover cultural resources documented in *The Archaeological and Historical Site Inventory at Lake Oroville, Butte County*,⁴⁹ and expose them "to vandalism or increased wave action and wind erosion," thus adversely affecting these resources. This study states that there are 223 archaeological and/or historic sites recorded in the water level fluctuation zone of Lake Oroville (p. 12). Where is the Cultural Study which shows that lowering Lake Oroville 2.4 ft. due to water transfers *will not* expose specific archaeological sites or traditional cultural properties?

⁴⁹ Prepared for the California Department of Water Resources by the Archaeological Research Center, Sacramento, and the Anthropological Studies Center, Rohnert Park, 2004. (Exhibit HH)

Without an inventory of the cultural resources which may be uncovered by the project-related drop in reservoir elevation for all the affected reservoirs, the numbers in the chart on page 13.3-15 mean nothing. The numbers in the chart provide no evidence that the project may or may not have an adverse effect on cultural resources. In contrast, substantial documentation of cultural resources in these areas exists.⁵⁰ The threat of potential project-related impacts to cultural resources triggers a Section 106 analysis of the project under the requirements of the National Historic Preservation Act, which "[r]equires Federal agencies to take into account the effects of their undertakings on historic properties" [36 CFR 800.1(a)].

112
con't

Although the issue here is the raising of the Shasta Reservoir water levels, cultural impacts related to water levels at the Shasta Reservoir has been an ongoing issue for the Winnemem Wintu Tribe. The Winnemem Wintu Tribe and all tribes within the project area (Area of Potential Effects) need to be consulted by federal and state agencies. A project-specific cultural study under CEQA is also required under 15064.5. *Determining the Significance of Impacts to Archaeological and Historical Resources*. Consultation with federally recognized tribes and California Native American tribes is required for this project.

113

k. Air Quality.

The EIS/EIR fails to analyze the air quality impacts in all these regions, especially with regard to the Buyers Service Area. Moreover, Appendix F – Air Quality Emissions Calculations exclude portions of the Sellers Service Area in Placer and Merced Counties. Conversely, there was not data supplied in Appendix F concerning the air quality impacts from the water transfers that would affect the Bay Area AQMD counties (Alameda, Contra Costa, Santa Clara), a Monterey Bay Unified APCD county (San Benito) and San Joaquin APCD counties (San Joaquin, Stanislaus, Merced, Fresno and Kings). Consequently, air quality impacts in the Buyers and Sellers Service Areas are unanalyzed and the EIS/EIR conclusions are not supported by evidence.

114

The EIS/EIR attempts to classify which engines would be subject to the ATCM based on whether an agricultural engine is in an air district designated in attainment for particulate matter and ozone, and is more than a half mile away from any residential area, school or hospital (aka

115

⁵⁰ Folsom Reservoir: <http://online.wsj.com/articles/SB10001424052702304419104579322631095468744>
Lake Oroville-
<http://www.latimes.com/local/la-me-lake-oroville-artifacts-20140707-story.html#page=1> (Exhibit II)
Shasta Reservoir
<http://www.winnememwintu.us/2014/09/09/press-release-dam-the-indians-anyway-winnememwar-dance-at-shasta-dam/> (Exhibit JJ)

sensitive receptors). (See p. 3.5-14). The EIS/EIR claims that the engines in Colusa, Glenn, Shasta and Tehama (part of Sellers Service Area) are exempt from the ATCM. However, 17 CCCR 93115.3 exempts in-use stationary diesel agricultural emissions not only based on the engines being remote, but all also “provided owners or operators of such engines comply with the registration requirements of section 93115.8, subdivisions (c) and (d), and the applicable recordkeeping and reporting requirement of section 93115.10,” which the EIS/EIR ignores. Furthermore, the EIS/EIR fails to present any data about the “tier” the subject agricultural diesel engines fall into. While the EIS/EIR identifies the tiers and concomitant requirements for replacement or repowering, it fails to provide any analysis or evidence evaluating whether the engines being used to pump water are operating within the permissible timeframes, depending on the tier designation.

115
con't

The EIS/EIR analyzes the assessment methods based on existing emissions models from the regulation, diesel emissions factors from USEPA Compilation of Air Pollutant Emission Factors (for Natural gas fired reciprocating engines and gasoline/diesel industrial engines) and CARB Emission Inventory Documentation (for land preparation, harvest operations and windblown dust); and CARB size fractions for particulate matter. None of these references is directly on point to diesel powered water pumps and the emissions caused thereby. Moreover, the EIS/EIR provides absolutely no information as to why these models are appropriate to serve as the basis for thresholds of significance.

116

The analysis provided in the EIS/EIR is less than complete. Here the “Significance Criteria” were only established and considered for the “sellers in the area of analysis where potential air quality impacts from groundwater substitution and crop idling transfers could occur.” (See p. 3.5-25) But that is only half the equation. The unconsidered air quality impacts include what and how increased crop production and vehicle usage would affect the air quality in the Buyers Service Area. Data and evidence of those impacts were not even considered.

In establishing the significance criteria, the EIS/EIR utilized known thresholds of significance from the air districts in the Sellers Service Area that had published them. For the other districts in the Sellers Service Area, the EIS/EIR made the assumption that “[t]he threshold used to define a ‘major source’ in the [Clean Air Act] CAA (100 tons per year [tpy])” could be “used to evaluate significance.” (See p. 3.5-26). There are several flaws with this over broad application of the “major source” threshold. First, agricultural pumps and associated agricultural activity are not typically considered “major sources,” especially when compared to major industrial sources. Second, the application of the major source threshold runs counter to the legal requirement that “[u]pwind APCDs are required to establish and implement emission control programs commensurate with the extent of pollutant transport to downwind districts,” as announced as a requirement of the California Clean Air Act. (See p. 3.5-11). Finally, the 100 tpy threshold is wildly disproportionate to the limits set in nearby or adjoining air district and covering the same air basin. For example, the Butte AQMD considers significance thresholds for

117

NOx, ROG/VOCs and PM10 to be 137lbs/day (25 tpy); Feather River AQMD considers significance thresholds for NOx and VOCs to be 25lbs/day (4.5 tpy) and 80 lbs/day (14.6 tpy) for PM10; Tehama APCD considers significance thresholds for NOx, ROG/VOCs and PM10 to be 137 lbs/day (25 tpy); Shasta AQMD considers significance thresholds for NOx, ROG/VOCs and PM10 on two levels – Level “B” is 137 lbs/day (25 tpy) and Level “A” is 25lbs/day (4.5 tpy) and 80 lbs/day (14.6 tpy) for PM10; and Yolo AQMD considers significance thresholds for ROG/VOCs and NOx to be 54.8 lbs/day (10 tpy) and 80 lbs/day (14.6 tpy) for PM10. Clearly, there is a proportional relationship between these thresholds of significance. In contrast, the EIS/EIR, with substantial evidence to the contrary, assumes that the threshold of significance for those air districts who have not published a *CEQA Handbook* should be 100 tpy, or an increase by magnitudes of 4 to 20 times more than similarly situated Central Valley air districts.

“When considering a project’s impact on air quality, a lead agency should provide substantial evidence that supports its conclusion in an explicit, quantitative analysis whenever possible.” (See Guide to Air Quality Assessment in Sacramento County, Sacramento Metropolitan Air Quality Management District, 2009, Ch. 2, p. 2-6). Importantly, the EIS/EIR provides no basis, other than an assumption, as to why the major source threshold of significance from the CAA should be used or is appropriate for assessing the significance of the project impacts under CEQA or NEPA. The use of the CAA’s threshold of significance for major sources is erroneous as a matter of law. (See *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793 (“The use of an erroneous legal standard [for the threshold of significance in an EIR] is a failure to proceed in the manner required by law that requires reversal.”)) Lead agencies must conduct their own fact-based analysis of the project impacts, regardless of whether the project complies with other regulatory standards. Here, the EIR/EIS uses the CAA threshold without any factual analysis on its own, in violation of CEQA. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109; citing *CBE v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114; accord *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 [“A threshold of significance is not conclusive . . . and does not relieve a public agency of the duty to consider the evidence under the fair argument standard.”].) This uncritical application of the CAA’s major source threshold of significance, especially in light of the similarly situated air district lower standards, represents a failure in the exercise of independent judgment in preparing the EIS/EIR.

117
con't

VI. The EIS/EIR Fails to Adequately Analyze Numerous Cumulative Impacts.

The Ninth Circuit Court makes clear that NEPA mandates “a useful analysis of the cumulative impacts of past, present and future projects.” *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999). “Detail is required in describing the cumulative effects of a proposed action with other proposed actions.” *Id.* CEQA further states that assessment of the

118

project's incremental effects must be "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines § 15065(a)(3).) "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (CEQA Guidelines § 15065(a)(3).)

An EIR must discuss significant cumulative impacts. CEQA Guidelines §15130(a). Cumulative impacts are defined as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. CEQA Guidelines § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects. CEQA Guidelines § 15355(a). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors* (1979) 88 Cal. App. 3d 397, 408 (internal quotation omitted).

In assessing the significance of a project's impact, the Bureau must consider "[c]umulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement." 40 C.F.R. §1508.25(a)(2). A "cumulative impact" includes "the impact on the environment which results from the incremental impact of the action when added to *other past, present and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* §1508.7. The regulations warn that "[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts." *Id.* §1508.27(b)(7).

An environmental impact statement should also consider "[c]onnected actions." *Id.* §1508.25(a)(1). Actions are connected where they "[a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.* §1508.25(a)(1)(iii). Further, an environmental impact statement should consider "[s]imilar actions, which when viewed together with other *reasonably foreseeable or proposed agency actions*, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." *Id.* §1508.25(a)(3) (emphasis added).

As discussed, below, and in the expert reports submitted by *Custis*, *EcoNorthwest*, *Cannon*, and *Mish* on behalf of AquAlliance, the EIS/EIR fails to comport with these standards for cumulative impacts upon surface and groundwater supplies, vegetation, and biological resources; and, the

118
con't

baseline and modeling data relied upon by the EIS/EIR that does not account for related transfer projects in the last 11 years.

118
con't

a. Recent Past Transfers.

Because the groundwater modeling effort didn't include the most recent 11 years record (1970-2003), it appears to have missed simulating the most recent periods of groundwater substitution transfer pumping and other groundwater impacting events, such as recent changes in groundwater elevations and groundwater storage (DWR, 2014b), and the reduced recharge due to the recent periods of drought. Without taking the hydrologic conditions during the recent 11 years into account, the results of the SACS2013 model simulation may not accurately depict the current conditions or predict the effects from the proposed groundwater substitution transfer pumping during the next 10 years.

119

- f. In 2009, the Bureau approved a 1 year water transfer program under which a number of transfers were made. Regarding NEPA, the Bureau issued a FONSI based on an EA.
- g. In 2010, the Bureau approved a 2 year water transfer program (for 2010 and 2011). No actual transfers were made under this approval. Regarding NEPA, the Bureau again issued a FONSI based on an EA.
- h. The Bureau planned 2012 water transfers of 76,000 AF of CVP water all through groundwater substitution.⁵¹
- i. In 2013, the Bureau approved a 1 year water transfer program, again issuing a FONSI based on an EA. The EA incorporated by reference the environmental analysis in the 2010-2011 EA.
- j. The Bureau and SLDMWA's 2014 Water Transfer Program proposed transferring up to 91,313 AF under current hydrologic conditions and up to 195,126 under improved conditions. This was straight forward, however, when attempting to determine how much water may come from fallowing or groundwater substitution during two different time periods, April-June and July-September, the reader was left to guess.⁵²

⁵¹ USBR 2012. Memo to the Deputy Assistant Supervisor, Endangered Species Division, Fish and Wildlife Office, Sacramento, California regarding Section 7 Consultation.

⁵² The 2014 Water Transfer Program's EA/MND was deficient in presenting accurate transfer numbers and types of transfers. The numbers in the "totals" row of Table 2-2 presumably should add up to 91,313. Instead, they add up to 110, 789. The numbers in the "totals" row of Table 2-3 presumably should add up to 195,126. Instead, they add up to 249,997. Both Tables 2-2 and 2-3 have a footnote stating: "These totals cannot be added together. Agencies could make water available through groundwater substitution, cropland idling, or a combination of the two; however, they will not make the full quantity available through both methods. Table 2-1 reflects the total upper limit for each agency."

These closely related projects impact the same resources, are not accounted for in the environmental baseline, and must be considered as cumulative impacts.

119
con't

b. Yuba Accord

The relationship between the Lead Agencies is not found in the EIS/EIR, but is illuminated in a 2013 Environmental Assessment. "The Lower Yuba River Accord (Yuba Accord) provides supplemental dry year water supplies to state and Federal water contractors under a Water Purchase Agreement between the Yuba County Water Agency and the California Department of Water Resources (DWR). Subsequent to the execution of the Yuba Accord Water Purchase Agreement, DWR and The San Luis & Delta- Mendota Water Authority (Authority) entered into an agreement for the supply and conveyance of Yuba Accord water, to benefit nine of the Authority's member districts (Member Districts) that are SOD [south of Delta] CVP water service contractors." ⁵³

In a Fact Sheet produced by the Bureau, it provides some numerical context and more of DWR's involvement by stating, "Under the Lower Yuba River Accord, up to 70,000 acre-feet can be purchased by SLDMWA members annually from DWR. This water must be conveyed through the federal and/or state pumping plants in coordination with Reclamation and DWR. Because of conveyance losses, the amount of Yuba Accord water delivered to SLDMWA members is reduced by approximately 25 percent to approximately 52,500 acre-feet. Although Reclamation is not a signatory to the Yuba Accord, water conveyed to CVP contractors is treated as if it were Project water." ⁵⁴ However, the Yuba County Water Agency ("YCWA") may transfer up to 200,000 under Corrected Order WR 2008-0014 for Long-Term Transfer and, "In any year, up to 120,000 af of the potential 200,000 af transfer total may consist of groundwater substitution. (YCWA-1, Appendix B, p. B-97.)." ⁵⁵

120

Potential cumulative impacts from the Project and the YCWA Long-Term Transfer Program from 2008 - 2025 are not disclosed or analyzed in the EIS/EIR. The *2015-2024 Water Transfer Program* could transfer up to 600,000 AF per year through the same period that the YCWA Long-Term Transfers are potentially sending 200,000 AF into and south of the Delta. How these two projects operate simultaneously could have a very significant impact on the environment and economy of the Feather River and Yuba River's watersheds and counties as well as the Delta. The involvement of Browns Valley Irrigation District and Cordua Irrigation District in both long-term programs must also be considered. This must be analyzed and presented to the public in a revised draft EIS/EIR.

⁵³ Bureau of Reclamation, 2013. *Storage, Conveyance, or Exchange of Yuba Accord Water in Federal Facilities for South of Delta Central Valley Project Contractors*.

⁵⁴ Bureau of Reclamation, 2013. *Central Valley Project (CVP) Water Transfer Program Fact Sheet*.

⁵⁵ State Water Resources Control Board, 2008. ORDER WR 2008 - 0025

Also not available in the EIS/EIR is disclosure of any issues associated with the YCWA transfers that have usually been touted as a model of success. The YCWA transfers have encountered troubling trends for over a decade that, according to the draft Environmental Water Account (“EWA”) EIS/EIR, are mitigated by deepening domestic wells (2003 p. 6-81). While digging deeper wells is at least a response to an impact, it hardly serves as a proactive measure to avoid impacts. Additional information finds that it may take 3-4 years to recover from groundwater substitution in the south sub-basin⁵⁶ although YCWA’s own analysis fails to determine how much river water is sacrificed to achieve the multi-year recharge rate. None of this is found in the EIS/EIR. What is found in the EIS/EIR is that even the inadequate SACFEM2013 modeling reveals that it could take more than six years in the Cordua ID area to recover from multi-year transfer events, although recovery is not defined (pp, 3.3-69 to 3.3-70). This is a very significant impact that isn’t addressed individually or cumulatively.

121

c. BDCP

The EIS/EIR fails to include the Bay Delta Conservation Plan (“BDCP”) in the Cumulative Impacts section and in any analysis of the *2015-2024 Water Transfer Program*. Although we acknowledge that BDCP could not possibly be built during the 10-Year Water Transfer Program’s operation, the EIS/EIR misses the point that the *2015-2024 Water Transfer Program* is a prelude to what comes later with BDCP. This connection is entirely absent. If the Twin Tunnels (the facilities identified in “Conservation Measure 1”) are built as planned with the capacity to take 15,000 cubic feet per second (“cfs”) from the Sacramento River, they will have the capacity to drain almost two-thirds of the Sacramento River’s average annual flow of 23,490 cfs at Freeport⁵⁷ (north of the planned Twin Tunnels). As proposed, the Twin Tunnels will also increase water transfers when the infrastructure for the Project has capacity. This will occur during dry years when State Water Project (“SWP”) contractor allocations drop to 50 percent of Table A amounts or below or when Central Valley Project (“CVP”) agricultural allocations are 40 percent or below, or when both projects’ allocations are at or below these levels (EIS/EIR Chapter 5). With BDCP, North to South water transfers would be in demand and feasible.

122

Communication regarding assurances for BDCP indicates that the purchase of approximately 1.3 million acre-feet of water is being planned as a mechanism to move water into the Delta to make up for flows that would be removed from the Sacramento River by the BDCP tunnels.⁵⁸ There is only one place that this water can come from: the Sacramento Valley’s watersheds. It is well known that the San Joaquin River is so depleted that it will not have any capacity to contribute meaningfully to Delta flows. Additionally, the San Joaquin River doesn’t flow past the proposed north Delta diversions and neither does the Mokelumne River.

⁵⁶ 2012. *The Yuba Accord, GW Substitutions and the Yuba Basin*. Presentation to the Accord Technical Committee. (pp. 21, 22).

⁵⁷ USGS 2009. <http://wdr.water.usgs.gov/wy2009/pdfs/11447650.2009.pdf> Exhibit KK)

⁵⁸ Belin, Lety, 2013. E-mail regarding Summary of Assurances. February 25 (Department of Interior). (Exhibit LL)

As discussed above, the EIS/EIR also fails to reveal that the *2015-2024 Water Transfer Program* is part of many more programs, plans and projects to develop water transfers in the Sacramento Valley, to develop a “conjunctive” system for the region, and to place water districts in a position to integrate the groundwater into the state water supply. BDCP is one of those plans that the federal agencies, together with DWR, SLDMWA, water districts, and others have been pursuing and developing for many years.

123

d. Biggs-West Gridley

The *Biggs-West Gridley Water District Gray Lodge Wildlife Area Water Supply* Project, a Bureau project, is not mentioned anywhere in the Vegetation and Wildlife or Cumulative Impacts sections.⁵⁹ This water supply project is located in southern Butte County where Western Canal WD, Richvale ID, Biggs-West Gridley WD, and Butte Water District actively sell water on a regular basis, yet impacts to GGS from this project are not disclosed. This is a serious omission that must be remedied in a recirculated draft EIS/EIR.

124

e. Other Projects

Court settlement discussions between the Bureau and Westlands Water District over provisions of drainage service. Case # CV-F-88-634-LJO/DLB will further strain the already over allocated Central Valley Project with the following conditions:

- k. A permanent CVP contract for 890,000 acre-feet of water a year exempt from acreage limitations.
- l. Minimal land retirement consisting of 100,000 acres; the amount of land Westlands claims it has already retired (115,000 acres) will be credited to this final figure. Worse, the Obama administration has stated it will be satisfied with 100,000 acres of “permanent” land retirement.
- m. Forgiveness of nearly \$400 million owed by Westlands to the federal government for capital repayment of Central Valley Project debt.
- n. Five-Year Warren Act Contracts for Conveyance of Groundwater in the Tehama-Colusa and Corning Canals – Contract Years 2013 through 2017 (March 1, 2013, through February 28, 2018).

125

Additional projects with cumulative impacts upon groundwater and surface water resources affected by the proposed project:

- a. The DWR Dry Year Purchase Agreement for Yuba County Water Agency water transfers from 2015-2025 to SLDMWA.⁶⁰

126

⁵⁹ http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=15381

⁶⁰ SLDMWA Resolution # 2014 386

http://www.sldmwa.org/OHTDocs/pdf_documents/Meetings/Board/Prepacket/2014_1106_Board_PrePacket.pdf

- b. GCID's *Stony Creek Fan Aquifer Performance Testing Plan* to install seven production wells in 2009 to extract 26,530 AF of groundwater as an experiment that was subject to litigation due to GCID's use of CEQAs exemption for research.
- c. Installation of numerous production wells by the Sellers in this Project many with the use of public funds such as Butte Water District,⁶¹ GCID, Anderson Cottonwood Irrigation District,⁶² and Yuba County Water Authority⁶³ among others.

126

VII. The EIS/EIR Fails to Develop Legally Adequate Mitigation Measures.

CEQA requires that the lead agency consider and adopt feasible mitigation measures that could reduce a project's adverse impacts to less than significant levels. Pub. Resources Code §§ 21002, 21002.1(a), 21100(b)(3), 21151, 22081(a). An adequate environmental analysis in the EIS/EIR itself is a prerequisite to evaluating proper mitigation measures: this analysis cannot be deferred to the mitigation measure itself. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Moreover, mitigation measures must A mitigation measure is inadequate if it allows significant impacts to occur before the mitigation measure takes effect. *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 740. An agency may not propose a list of measures that are "nonexclusive, undefined, untested and of unknown efficacy." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95. Formulation of mitigation measure should generally not be deferred. CEQA Guidelines § 15126.4(a)(1)(B). If deferred, however, mitigation measure must offer precise measures, criteria, and performance standards for mitigation measures that have been evaluated as feasible in the EIR, and which can be compared to established thresholds of significance. *E.g., POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011; CEQA Guidelines § 15126.4(a)(1)(B); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275. Economic compensation alone does not mitigate a significant environmental impact. *See* CEQA Guidelines § 15370; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122. Where the effectiveness of a mitigation measure is uncertain, the lead agency must conclude the impact will be significant. *Citizens for Open Govt. v. City of Lodi* (2012) 70 Cal.App.4th 296, 322; *Fairview Neighbors v. County of Ventura* (1999) 70

127

⁶¹ Prop 13. Ground water storage program: 2003-2004 Develop two production wells and a monitoring program to track changes in ground.

⁶² "The ACID Groundwater Production Element Project includes the installation of two groundwater wells to supplement existing district surface water and groundwater supplies."
http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=8081

⁶³ Prop 13. Ground water storage program 2000-2001: Install eight wells in the Yuba-South Basin to improve water supply reliability for in-basin needs and provide greater flexibility in the operation of the surface water management facilities. \$1,500,00;

Cal.App.4th 238, 242. An EIR must not only mitigate direct effects, but also must mitigate cumulative impacts. CEQA Guidelines § 15130(b)(3).

Under NEPA, “all relevant, reasonable mitigation measures that could improve the project are to be identified,” including those outside the agency’s jurisdiction,⁶⁴ and including those for adverse impacts determined to be less-than-significant (40 C.F.R. § 1502.16(h)).

As discussed, below, and in the expert reports submitted by *Custis*, *EcoNorthwest*, *Cannon*, and *Mish* on behalf of AquAlliance, the EIS/EIR fails to comport with these standards.

The EIS/EIR illegally defers the development of and commitment to feasible mitigation measures to reduce or avoid a whole host of potentially significant project impacts. The EIS/EIR relies on mitigation measures WS-1 and GW-1 to reduce or avoid significant project effects through the entire environmental review document, not just for surface and ground water supplies, but also for impacts to vegetation, subsidence, regional economics, . (3.7-26, 3.7-56, 3.10-37, 3.10-51.) Unfortunately, these mitigation measures fail all standards for CEQA compliance, deferring analysis of the impact in question to a future time, including no criteria or performance standards by which to evaluate success, and failing to demonstrate that the measures are feasible or sufficient.

But the precise relationship of these mitigation measures is unclear. For example, the EIS/EIR relies on GW-1 to mitigate impacts to vegetation and wildlife as a result of stream flow loss; why doesn’t the EIS/EIR consider the streamflow mitigation measure for this impact?

a. Streamflow Depletion.

WS-1 requires that a portion of transfer water be held back to offset streamflow depletion caused by groundwater substitution pumping, but fails to include critical information to ensure that any such mitigation measure could work. First, it is not clear that any transfer release and the groundwater substitution pumping would simultaneously occur, in real time. If groundwater pumping causes streamflow depletion at any time other than exactly when the transfer is made, then the transfer deduction amount will not avoid streamflow drawdown. And, indeed, it is well known that streamflow depletion can continue, directly and cumulatively, after the transfer activity ends. (E.g., figures B-4, B-5 and B-6 in Draft EIS/EIR Appendix B).

Next, the EIS/EIR fails to include any meaningful information to determine whether the applicable “streamflow depletion factor” to be applied to any single transfer project will mitigate significant impacts.

The EIS/EIR provides that “The exact percentage of the streamflow depletion factor will be assessed and determined on a regular basis by Reclamation and DWR, in consultation with buyers and sellers, based on the best technical information available at that time.” (EIS/EIR at

⁶⁴ <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>

127
con't

128

129

3.1-21.) More information is required. It is unclear whether WS-1 considers the cumulative volume of water pumped for each groundwater substitution transfers, or the instantaneous rate of stream depletion caused by the pumping. Any factor must be the outcome of numerous measured variables, such as the availability of water to capture, the rate and duration of recharge, the streambed sediment permeability, the duration of pumping, the distance between the well and stream, and others; but the EIS/EIR fails to provide any means of evaluating these various factors. How good must the “best technical information available at that time” be? What is the likelihood it will be available, what constraints does this face, and what requirements are in place to ensure that sufficient information is obtained? Why hasn’t this information been analyzed in the EIS/EIR? What roles do the buyers and sellers have in reaching this determination?

129
con't

Moreover, the EIS/EIR fails to identify the threshold of significance below which significant impacts would not occur. WS-1 purports to avoid “legal injury,” but fails to define any threshold or criteria that will be applied in the performance of WS-1 to clearly determine when legal injury would ever occur.

b. Groundwater Overdraft.

The EIS/EIR illegally defers formulation and evaluation of mitigation measure GW-1 in much the same way as WS-1. In reliance on GW-1, the EIS/EIR goes so far as to defer the environmental impact analysis that should be provided now, as part of the EIS/EIR itself. Moreover, GW-1 fails to include clear performance standards, criteria, thresholds of significance, evaluation of feasibility, analysis of likelihood of success, and even facially permits significant impacts to occur. And importantly, GW-1 does not, in fact, reduce potentially significant impacts to less-than-significant levels, but rather, attempts to monitor for when significant effects occur, then purports to provide measures to slow the impact from worsening.

130

GW-1 begins by referencing the *DRAFT Technical Information for Preparing Water Transfer Proposals* (“DTIPWTP”)(Reclamation and DWR 2013) and Addendum (Reclamation and DWR 2014). First, it is worth noting that this document is in DRAFT form, as have all such previous iterations of the Technical Information for Preparing Water Transfer Proposals, leaving any guidance for a final mitigation measure uncertain. Second, the DTIPWTP itself requires a project-specific evaluation of then-existing groundwater and surface water conditions to determine potentially significant impacts to water supplies; but this is exactly the type of impact analysis that must occur now in the self-described project EIS/EIR before any consideration of mitigation measures is possible. Even still, the exact scope of future environmental review is unclear as well. “Potential sellers will be required to submit well data,” but the EIS/EIR does not explain what data or why. (EIS/EIR at 3.3-88.)

131

GW-1 next requires potential sellers “to complete and implement a monitoring program,” but a monitoring program itself cannot prevent significant impacts from occurring. “ The monitoring

132

program will incorporate a sufficient number of monitoring wells to accurately characterize groundwater levels and response in the area before, during, and after transfer pumping takes place.’ (EIS/EIR 3.3-88.) Again, this should be done now, for public review, to determine the significance of project impacts before the project is approved. Moreover, the EIS/EIR fails to provide any guidance on what constitutes “a sufficient number of monitoring wells.” GW-1 then requires monitoring data no less than on a monthly basis, but common sense suggests that significant groundwater pumping could occur in less than a month’s time. GW-1 requires that “Groundwater level monitoring will include measurements before, during and after transfer-related pumping,” but monitoring after transfer-related pumping can only show whether significant impacts *have* occurred; it cannot prevent them. Yet this is exactly what the EIS/EIR proposes: “The purpose of Mitigation Measure GW-1 is to monitor groundwater levels during transfers to avoid potential effects. If any effects occur despite the monitoring efforts, the mitigation plan will describe how to address those effects.” (EIS/EIR 3.3-91.) Hence, GW-1 only requires elements of the mitigation plan to kick in after monitoring shows significant impacts, which are extremely likely to occur given the fact that monitoring alone amounts to no mitigation or avoidance measure.

132
con't

Even still, the proposed mitigation plans don’t mitigate significant impacts. The mitigation plan includes the following requirements: “Curtailment of pumping until natural recharge corrects the issue.” This, of course, could take years and is acknowledged in the EIS/EIR (p. 3.1-17 and 18), and really amounts to no mitigation of the significant impact at all. “Reimbursement for significant increases in pumping costs due to the additional groundwater pumping to support the transfer.” In what amount, at what time, as decided by who? Monetary compensation is not always sufficient to cover damages to business operations. “Curtailment of pumping until water levels raise above historic lows if non-reversible subsidence is detected (based on local data to identify elastic versus inelastic subsidence).” It does not follow that any water level above the *historic lows* avoids or offsets damage from non-reversible subsidence. -only admits that irreversible subsidence may occur. Finally, “[o]ther actions as appropriate” is so vague as to be meaningless. (EIS/EIR 3.3-90.)

133

The wholesale deferral of these mitigation measures is particularly confusing since the lead agencies should already have monitoring and mitigation plans and evaluation reports based on the requirements of the DTIPWTP for past groundwater substitution transfers, which likely were undertaken by some of the same sellers as the proposed 10-year transfer project. The Draft EIS/EIR should provide these existing Bureau approved monitoring programs and mitigation plans as examples of what level of technical specificity is required to meet the objectives of GW-1.

The DTIPWRP doesn’t add any additional monitoring or mitigation requirements for subsidence, stating that areas that are susceptible to land subsidence may require land surface elevation surveys, and that the Project Agencies will work with the water transfer proponent to develop a mutually agreed upon subsidence monitoring program. The monitoring locations in “strategic” locations are similarly deferred with no guiding criteria.

134

Lastly, groundwater quality monitoring only appears to be required after a transfer has begun, which again is too late to prevent any significant impact from occurring. (EIS/EIR 3.3-89.)

135

Mitigation measure GW-1 calls for stopping pumping after significant impacts are detected and then waiting for natural recovery of the water table. This might not be in time for groundwater dependent farms or riparian trees (cottonwoods & willows) to recover from the impact or could greatly extend the time to recovery. In the meantime, riparian-dependent wildlife including Swainson's hawks would be without nesting habitat, migration corridors, and foraging areas. The mitigation measure should require active restoration of important habitat such as riparian and wetland, not natural recovery. Recovery to an arbitrary water level is not necessarily the same as recovery of wildlife habitat and populations of sensitive species.

136

The water level monitoring in the mitigation measure should give explicit quantitative criteria for significant impact. Stating that a reduction in flow or GW level is "within natural variation" and therefore not significant is deceptive. The natural variation includes extreme cases and the project should not be allowed to add an additional increment to an already extreme condition. The extremes are supposed to be rare, not long-term and chronic. For example, Little Chico Creek may be essentially dry at times but it is not totally dry and that may be all that allows plants and animals to persist until wetter conditions return. If everything dies because the creek becomes totally dry due to the project, then it may never recover.

137

VIII. The EIS/EIR Fails to Analyze a Reasonable Range of Alternatives.

The EIS/EIR is required to evaluate and implement feasible project alternatives that would lessen or avoid the project's potentially significant impacts. Pub. Resources Code §§ 21002, 21002.1(a), 21100(b)(4), 21150; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. This is true even if the EIS/EIR purports to reduce or avoid any or all environmental impacts to less than significant levels. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376. Alternatives that lessen the project's environmental impacts must be considered even if they do not meet all project objectives. CEQA Guidelines § 15126.6(a)-(b); *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1302; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866. Further, the EIS/EIR must contain an accurate no-project alternative against which to consider the project's impacts. CEQA Guidelines § 15126.6(e)(1); *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477.

138

Under NEPA, the alternatives analysis constitutes "the heart of the environmental impact statement" (40 C.F.R. § 1502.14). The agency must "rigorously explore and objectively evaluate all reasonable alternatives" (40 C.F.R. § 1502.14(a), 40 C.F.R. § 1502.14(b)), and to identify the preferred alternative (40 C.F.R. § 1502.14(e)). The agency must consider the no action

alternative, other reasonable courses of action, and mitigation measures that are not an element of the proposed action (40 C.F.R. § 1508.25(b)(1)-(3)).

138
con't

a. No Environmentally Superior Alternative is Identified.

The EIS/EIR fails to follow the law and significantly misleads the public and agency decision-makers in declaring that none of the proposed alternatives are environmentally superior. (EIS/EIR 2-39.) First, neither CEQA nor NEPA provide the lead agencies with discretion to sidestep this determination. As the Council on Environmental Quality (CEQ) has explained, “[t]hrough the identification of the environmentally preferable alternative, the decision maker is clearly faced with a choice between that alternative and the others, and must consider whether the decision accords with the Congressionally declared policies of the Act.”⁶⁵ CEQA provides that “[i]f the environmentally superior alternative is the “no project” alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” (CEQA Guidelines § 15126.6(e)(2).)

139

First, the EIS/EIR fails to identify whether the “no project” alternative is environmentally superior to each other alternative. If that is the case, the EIS/EIR must then identify the next most environmentally protective or beneficial alternative. Here, the EIS/EIR presents evidence that Alternative 3 and Alternative 4 each would lessen the environmental impacts of the proposed project. The EIS/EIR however then shirks its responsibility to identify the environmentally superior alternative by casting the benefits of Alternatives 3 and 4 as mere “trade-offs.” This gross mischaracterization misleads the public and agency decision-makers, as the only “trade-off” between the proposed alternative and Alternatives 3 or 4 would be more or less adverse environmental effect.

The EIS/EIR argument that its conclusion that no project impacts are significant and unavoidable misses the point. Just as an EIS/EIR may not simply omit any alternatives analysis when there is purported to be no significant and unavoidable impact, neither can the agencies decline to identify the environmentally superior alternative. In fact, the proposed project would cause numerous significant and adverse environmental effects, and the EIS/EIR relies on wholly deferred and inadequate mitigation measures to lessen those effects, even allowing some level of significant impacts to occur before kicking in. But mitigation measures alone are not the only way to lessen or avoid significant project effects: the alternatives analysis performs the same function, and should be considered irrespective of the mitigation measures proposed.

140

b. Feasible Alternatives to Lessen Project Impacts are Excluded.

In light of the oversubscribed water rights system of allocation in California, changing climate conditions, and severely imperiled ecological conditions throughout the Delta, the EIS/EIR

141

⁶⁵ Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, 48 Fed. Reg. 18,026 (Mar.16, 1981) Questions 6a.

should consider additional project alternatives to lessen the strain on water resources. Alternatives not considered in the EIS/EIR that promote improved water usage and conservation include:

Fallowing in the area of demand. The EIS/EIR proposes fallowing in the area of origin to supply water for the transfers yet fails to present the obvious alternative that would fallow land south of the Delta that holds junior, not senior, water rights. This would qualify as an, “immediately implementable and flexible” alternative that is part of the Purpose and Need section (p.1-2). Whether or not this is a preference for the buyers, this is a pragmatic alternative that should be fully explored in a recirculated EIS/EIR.

Crop shifting in the area of demand. The EIS/EIR proposes crop shifting in the area of origin to supply water for the transfers yet fails to present the obvious alternative that would shift crops south of the Delta for land that holds junior, not senior, water rights. Hardening demand by planting perennial crops (or houses) must be viewed as a business decision with its inherent risks, not a reason to dewater already stressed hydrologic systems in the Sacramento Valley. This would qualify as an, “immediately implementable and flexible” alternative that is part of the Purpose and Need section (p.1-2). Whether or not this is a preference for the buyers, this is a pragmatic alternative that should be fully explored in a recirculated EIS/EIR.

Mandatory conservation in urban areas. In the third year of a drought, an example of urban areas failing to require serious conservation is EBMUD’s flyer from October’s bills that reflects the weak mandates from the SWRCB.

- Limit watering of outdoor landscapes to two times per week maximum and prevent excess runoff.
- Use only hoses with shutoff nozzles to wash vehicles.
- Use a broom or air blower, not water, to clean hard surfaces such as driveways and sidewalks, except as needed for health and safety purposes.
- Turn off any fountain or decorative water feature unless the water is recirculated.

While it is laudable that EBMUD customers have cut water use by 20 percent over the last decade,⁶⁶ before additional water is ever transferred from the Sacramento River watershed to urban areas, mandatory usage cuts must be enacted during statewide droughts. This would qualify as an, “immediately implementable and flexible” alternative that is part of the Purpose and Need section (p.1-2). This alternative should be fully vetted in a recirculated EIS/EIR.

Land retirement in the area of demand. Compounding the insanity of growing perennial crops in a desert is the resulting excess contamination of 1 million acres of irrigated land in the San Joaquin Valley and the Tulare Lake Basin that are tainted with salts and trace metals like selenium, boron, arsenic, and mercury. This water drains back—after leaching from these soils

⁶⁶ <https://www.ebmud.com/water-and-wastewater/latest-water-supply-update>

the salts and trace metals—into sloughs and wetlands and the San Joaquin River, carrying along these pollutants. Retirement of these lands from irrigation usage would stop wasteful use of precious fresh water resources and help stem further bioaccumulation of these toxins that have settled in the sediments of these water bodies. The Lead and Approving Agencies have known about this massive pollution of soil and water in the area of demand for over three decades.⁶⁷ Accelerating land retirement could diminish south of Delta exports and provide water for non-polluting buyers. Whether or not this is a preference for all of the buyers, this is a pragmatic alternative that should be fully explored in a recirculated EIS/EIR.

141
con't

Adherence to California's water rights. As mentioned above, the claims to water in the Central Valley far exceed hydrologic reality by more than five times. Unless senior water rights holders wish to abandon or sell their rights, junior claimants must live within the hydrologic systems of their watersheds. This would qualify as an, "immediately implementable and flexible" alternative that is part of the Purpose and Need section (p.1-2). Whether or not this is a preference for the buyers, this is a pragmatic alternative that should be fully explored in a recirculated EIS/EIR.

IX. The EIS/EIR Fails to Disclose Irreversible and Irretrievable Commitment of Resources, and Significant and Unavoidable Impacts.

Under NEPA, impacts should be addressed in proportion to their significance (40 C.F.R. § 1502.2(b)), and all irreversible or irretrievable commitment of resources must be identified (40 C.F.R. § 1502.16). And CEQA requires disclosure of any significant impact that will not be avoided by required mitigation measures or alternatives. CEQA Guidelines § 15093. Here, the EIS/EIR does neither, relegating significant impacts to groundwater depletion, land subsidence, and hardened demand for California's already-oversubscribed water resources, to future study pursuant to inadequately described mitigation measures, if discussed at all.

142

a. Groundwater Depletion.

As discussed, above, the EIS/EIR groundwater supply mitigation measures rely heavily on monitoring and analysis proposed to occur *after* groundwater substitution pumping has begun, perhaps for a month or more. Only after groundwater interference, injury, overdraft, or other harms (none of which are assigned a definition or significance threshold) occur, would the EIS/EIR require sellers to propose mitigation measures, which are as of yet undefined. As a result, significant and irretrievable impacts to groundwater are fully permitted by the proposed project.

b. Subsidence.

Here, again, the EIS/EIR suffers the same flaw of only catching and proposing to mitigate

143

⁶⁷ <http://www.usbr.gov/mp/cvpia/3408h/>

subsidence after it occurs. But damages caused by subsidence can be severe, permanent, and complicated. The EIS/EIR does not purport to avoid these impacts, nor possibly mitigate them to less than significant levels. Instead, the EIS/EIR provides for “Reimbursement for modifications to infrastructure that may be affected by non-reversible subsidence.” This unequivocally provides for significant and irreversible impacts to occur.

143
con't

c. Transfer Water Dependency.

The EIS/EIR fails to account for long-term impacts of supporting agriculture and urban demands and growth with transfer water. Agriculture hardens demand by expansion and crop type and urban users harden demand by expansion. Both sectors may fail to pursue aggressive conservation and grapple with long-term hydrologic constraints with the delivery of more northern California river water that has been made available by groundwater mining and fallowing. Since California has high variability in precipitation year-to-year (<http://cdec.water.ca.gov/cgi-progs/iodir/WSIHIST>) (Exhibit Y), and how will purchased water be used and conserved? Should agricultural water users be able to buy Project water, how will DWR and the Bureau assure that transferred water for irrigation is used efficiently? Could purchased water be used for any kind of crop or landscaping, rather than clearly domestic purposes or strictly for drought-tolerant landscaping?

144

Without a hierarchy of priority uses among agricultural or urban users for purchasing CVP and non-CVP water, the EIS/EIR fails to ensure that California water resources will not go to waste, and will not be used to harden unsustainable demands.

X. The EIS/EIR Fails to Adequately Evaluate Growth-Inducing Impacts.

The EIS/EIR gives short shrift to the growth inducing impact analyses required under both CEQA and NEPA by absolutely failing to realize or by obfuscating the obvious: these types of Long-Term Water Transfers inherently lead to economic and population growth. Not only are the amount of water sales and types of water sales unknown to the Lead Agencies and the public, but once water is sold and transferred to the buyer agency, there are no use limitations or priority-criteria imposed on the buyer. Whether agricultural support or municipal supply, hydraulic fracturing, industrial use, or onward transfer, the potential growth inducing impacts, both economically and physically are limitless. And once agencies and communities are hooked on buying water to sustain economic conditions or to support development and population growth, while drought conditions continue or are exacerbated, unwinding the clock may prove impossible.

145

Growth inducing impacts are addressed in Section 15126.2(d) of the CEQA Guidelines, and the Council on Environmental Quality NEPA Sections 1502.16(b) and 1508.8(b). CEQA Section 15126.2(b) requires an analysis of a project’s influence on economic or population growth, or increased housing construction and the future developments’ associated environmental impacts. The CEQA Guidelines define growth inducing impacts as “...the ways in which the

proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” Under NEPA, indirect effects as declared in Section 1508.8(b) include reasonably foreseeable growth inducing effects from changes caused by a project.

145
con't

A project may have characteristics that encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. CEQA Guidelines section 15126.2(d) admonishes the planner not to assume that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment. Included here are projects that would remove physical obstacles to growth, such as provision of new water supply achieved through Long Term Water Transfers. Removal of a barrier such as water shortages may lead to the cultivation of crops with higher-level water dependency and higher profit margins at market, or may supplement perceived and actual advantages of living in population-dense locales, leading to increased population growth.

146

The EIS/EIR states that direct growth-inducing impacts are typically associated with the construction of new infrastructure while projects promoting growth, like increased water supply in dry years, could have indirect growth inducing effects. Claiming that growth inducing impacts would only be considered significant if the ability to provide needed public services is hindered, or the potential for growth adversely affects the environment, the EIS/EIR then incorrectly concludes that the proposed water transfer from willing sellers to buyers, to meet existing demands, would not directly or indirectly affect growth beyond what is already planned. But the EIS/EIR does not describe “what is already planned,” nor how binding such plans would be.

Similar to the drought period in the late 1980’s and early 1990’s, urban agencies demand was approximately 40 percent of the transfer market. During that drought period, dry-year purchases were short term deals, intended to offset lower deliveries. However, this time around most of the transfer water is available to support longer-term growth, not solely to make up for shortfalls during droughts. Under current law, urban water agencies must establish long-term water supply to support new development, and long term transfers can provide this necessary evidence.⁶⁸

Adding to these concerns is the increase in fracking interests throughout the state, requiring large-scale water demand to extract oil and gas, run by companies with the financial ability to influence water rights through payment. While one county directly south of the boundary involving this proposed transfer agreement recently banned fracking, other counties in

⁶⁸ California Senate Bills 221 and 610, entered into law, 2001: requires agencies with over 5000 service connections and those with under 5000 service connections to demonstrate at least 20 years of available water supply respectively, for projects in excess of 500 residential units, or equivalent in combined residential and other demand (large service agencies), or for projects demanding least 10 percent growth in local water needs (small service agencies).

California are either involved in the practice of fracking, have yet to ban the practice, or have no interest in a fracking ban. Notably, the Monterey Shale Formation that stretches south through central California is in the buyer-area of the water districts served by this potential Long-Term Water Transfer Agreement. Without use limitations upon water transfers proposed within this agreement, water transferred under this plan may well be used for fracking

146
con't

The EIS/EIR inappropriately fails to evaluate or disclose these reasonably foreseeable growth-inducing impacts.

XI. Conclusion

Taken together, the Bureau, SLDMWA, and DWR treat these serious issues carelessly in the EIS/EIR, the *Draft Technical Information for Water Transfers in 2013*, and in DWR's specious avoidance of CEQA review. In so doing, the Lead and Approving Agencies deprive decision makers and the public of their ability to evaluate the potential environmental effects of this Project and violate the full-disclosure purposes and methods of both the National Environmental Policy Act and the California Environmental Quality Act. For each of the foregoing reasons, we urge that the environmental review document for this project be substantially revised and recirculated for public and agency review and comment before any subject project is permitted to proceed.

147

Sincerely,



Barbara Vlamis, Executive Director
AquAlliance



Bill Jennings, Executive Director
California Sportfishing Protection Association



Jason Flanders
Aqua Terra Aeris Law Group

Summary

The Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report Public Draft (henceforth referred to as the “EIR/EIS”) articulates an ambitious plan to transfer water within the state of California. But this ambition is not matched by a similar degree of technical merit, as the modeling components of the EIR/EIS are potentially inadequate, inaccurate, and insufficient to the task. Because of this shortcoming, the EIR/EIS fails to demonstrate that environmental impacts of these transfers will be acceptably small. In particular, the groundwater substitution components of the proposed water transfers are based on modeling assumptions that likely limit their practical accuracy, and on computational simulation techniques that cannot be trusted for their intended use without additional work.

1

The EIR/EIS as written fails to make a technically-persuasive case for these water transfers, and therefore the proposed transfers should be rejected until the various water transfer stakeholders can advocate more effectively for these transfers by using sound scientific principles instead of mere assertions of negligible impact on the environment.

Critique Overview

This critique concentrates on the groundwater modeling portions of the EIR/EIS, as those portions of the EIR/EIS provide the least technical information relative to the importance of this particular part of the transfer plans. Groundwater resources are seldom seen directly, but their influence is present throughout the hydrological cycle. When the water table sinks, streams dry up and fish die. And when that phreatic surface drops below the level available to domestic water-supply wells, families lose their water supply. Groundwater mining is an all-too-common source of environmental woes, including irreversible loss of aquifer capacity and subsidence observable at the surface of the ground. So accurate groundwater modeling is an essential component of any trustworthy assessment of potential negative environmental effects.

2

This critique focuses on four particular aspects of the groundwater modeling efforts outlined in the EIR/EIS, namely:

- the lack of a defensible technical basis for the use of the SacFEM2013 groundwater model in assessing man-made hazards due to groundwater substitution activities,
- the inherent assumptions and potential inaccuracies present in the SacFEM2013 model, including an exposition of how better groundwater modeling techniques could have been deployed to engender more trust in the computed results,
- the lack of any formal characterization of uncertainty in the model that might be used to assess the impact of those SacFEM2013 model inaccuracies, and
- some general comments on the EIR/EIS’s all-too-often inadequate technical treatment of aquifer mechanics.

3

Sins of omission and commission are thus found in the EIR/EIS, and this critique will attempt to guide the reader through a discussion of each, towards the goal of more accurate and technically-defensible modeling that would be required to support the proposed water transfers.

Professional Background

My professional experience has long been concentrated in the development and deployment of large-scale computational models for engineered and natural systems. I have worked in this professional field for well over thirty years, and have published refereed journal publications on subsurface mechanics and computational simulation of geological processes, as well as texts and related educational works on computational modeling in solid and fluid mechanics. I have served as a regular faculty member on the Civil Engineering faculties of two major U.S. research universities (the University of California, Davis, and the University of Oklahoma), as well as in leading-edge technical and administrative capacities at federal national laboratories. With my academic colleagues and graduate students, I have published journal articles and technical reports on aquifer mechanics, computational geomechanics, fluid-solid interaction, high-performance computing, and on the inherent limits to accuracy of computational modeling for complex systems in the presence of inherent uncertainties. I have earned M.S. and Ph.D. in Civil Engineering and a B.S. in Mathematics, all from the University of California, Davis. I have lived in Northern California for more than one-half of my adult life, and have long provided *pro bono* technical assistance on science and engineering topics of import to the quality of life for residents of California. My current work involves simulation of complex man-made and natural systems using some of the largest computers in the world, and so I am well-equipped to describe the state-of-the-art in predictive modeling for large-scale water transfers in California.

Overview of Technical Concerns

This review focuses primarily on the groundwater substitution aspects of the EIR/EIS, because those aspects are where my own expertise is deepest. The groundwater model utilized in the EIR/EIS has enough shortcomings to call into question the trustworthiness of the entire EIR/EIS, and until these shortcomings are remedied, such groundwater transfers should not be permitted. Some representative problems with the SacFEM2013 model are presented below.

Fundamental Technical Problems with the SacFEM2013 Model

In simplest terms, the EIR/EIS fails to make a compelling case for the use of the SacFEM2013 groundwater model in assessing man-made hazards due to groundwater substitution activities.

For example Appendix D of the EIR is provided to document the SacFEM2013 model, but this section of the EIR/EIS raises more questions than answers about the suitability of the model. Some of the assertions made in Appendix D are incorrect, while others are irrelevant to the purpose of the EIR/EIS. And the most fundamental problem with the information presented on the SacFEM2013 model is that Appendix D fails to provide enough technical context to justify the use of SacFEM2013. A technically-informed citizen interested in providing accurate public commentary on the EIR/EIS must search the literature and other open-source documents to find relevant information about the suitability of the SacFEM2013 model. Unfortunately, these searches prove fruitless, because there simply is not enough information provided in the EIR/EIS to perform a technically-defensible characterization of the suitability of SacFEM2013. Because of this, some of my comments include qualifiers such as “appears to be” or “apparently”. These qualifiers do not imply any insufficiency in my own understanding: they are explicit reminders that the EIR/EIS fails to provide an adequate technical basis for use of SacFEM2013.

One example of incorrect modeling assertions in the EIR/EIS is the characterization¹ of SacFEM2013 and its parent code MicroFEM as “three-dimensional” and “high-resolution”. In fact, the SacFEM2013 model provides only a linked set of two-dimensional analyses², and would more charitably be described as “two-and-a-half dimensional” instead of possessing a fully-3D modeling capability. This limitation is not an unimportant detail, as a general-purpose 3D groundwater model could be used to predict many important physical responses, e.g., the location of the phreatic surface within an unconfined aquifer. For the SacFEM2013 model, this prediction is part of the data instead of part of the computed solution, and hence SacFEM2013 apparently has no predictive capability for this all-important aquifer response. Here is the relevant EIR/EIS content on this topic³:

The uppermost boundary of the SACFEM2013 model is defined at the water table. To develop a total saturated aquifer thickness distribution and, therefore, a total model thickness distribution, it was necessary to construct a groundwater elevation contour map and then subtract the depth to the base of freshwater from that groundwater elevation contour map. Average calendar year groundwater elevation measurements were obtained from the DWR Water Data Library. These measurements were primarily collected biannually, during the spring and fall periods; and these values were averaged at each well location to compute an average water level for each location. These values were then contoured, considering streambed elevations for the gaining reaches of the major streams included in the model, to develop a target groundwater elevation contour map for the year 2000.

5

Note that, in order to begin a SacFEM2013 analysis, the phreatic surface must be specified instead of predicted, and that this specification is based on past records of water table location instead of on verifiable accurate predictions of future groundwater resources. Since California is currently in an unprecedented drought, and because the assessment of similarly-unprecedented future large-scale groundwater transfers is the whole point of the EIR/EIS, it is technically inappropriate to use an averaged historical basis to locate the water table surface simply because the SacFEM2013 is unable to predict that important parameter from first principles!

A good example of an irrelevant assertion in the EIR/EIS is the list of reasons given⁴ why MicroFEM was chosen as the modeling platform. The first reason is true of *any* finite-element code used to model groundwater response, and the second and third arise from the existence of a graphical user interface for the model input and output data. Any modern computational tool (e.g., the word-processing application I’m using to write this critique) possesses such a user interface, so all three reasons apply equally well to any well-designed finite element application, yet they are used to motivate the choice of only one such application. Why this specific choice of MicroFEM was made is never developed in the EIR/EIS, but it should be, as with the choice of computational model comes a set of model constraints that can limit the model’s utility.

6

Technical sidebar: *finite element models are particularly easy to develop and deploy graphical user interfaces for, because the interpolation scheme used to generate the finite element results provides uniquely-defined and easy-to-compute results for every point in the spatial domain. In addition to this readily-accessible supply of spatial data available for visual interpretation of results, these models also can produce results at regular time*

¹ EIR/EIS, Appendix D, Page 1

² S.A. Leake and P.A. Mock, “Dimensionality of Ground Water Flow Models”, *Ground Water*, Volume 35, Number 6, Page 930, 1997

³ EIR/EIS, Appendix D, Page 4

⁴ EIR/EIS, Appendix D, Page 1

intervals (e.g., monthly) that make it easy to generate animations of the spatial data. So the presence of a graphical user interface is a poor reason to choose a particular finite element application, as custom visualization tools are readily developed at low cost to support the use of the model, or public-domain visualization tools can be utilized instead.

6

Unfortunately for the results presented in the EIR/EIS, MicroFEM is a poor choice for such large-scale modeling. It is an old code that apparently utilizes only the simplest (and least accurate) techniques for finite-element modeling of aquifer mechanics, and MicroFEM (and hence SacFEM2013) embed serious limitations into the model that compromise the accuracy of the computed results. These limitations include, but are not limited to, the following:

- The model places a remarkably-low upper limit on problem resolution, i.e., 250,000 surface nodes are available to the modeler, but no more. This limit would appear to the technically-oriented reader to indicate that the advanced age of the MicroFEM program has constrained its software architecture so that high-resolution and high-fidelity models are beyond its capabilities. In particular, its MS/DOS origins might indicate an inability to address sufficient computer memory to support a higher-resolution model, or that its solver routines do not scale to support the multiple-processor capabilities available on virtually all current computers. If this is the case, then this problem should be explicitly noted in the EIR/EIS as a model limitation. If it is not the case, then some justification for this upper limit should be provided to aid in the impartial evaluation of the SacFEM2013 model.
- As mentioned above, the SacFEM2013 model is only partially predictive, in that some aquifer responses are entered as input data instead of being computed as predictive quantities. The most serious of these is the lack of ability to predict the location of the phreatic surface in the aquifer. This location is a natural candidate as the single the most important predicted quantity available for understanding near-surface environmental effects of groundwater motion, yet it is apparently not computed by SacFEM2013, which instead relies on its location via the a priori data-entry process quoted above.
- As mentioned earlier, the model is not a three-dimensional model, but instead estimates groundwater response via approximations involving a suite of two-dimensional layers with uniform horizontal permeabilities coupled via estimated leakage parameters that represent the actual three-dimensional flow fields of groundwater resources. The limitations of this self-induced model constraint are outlined in more detail below, but the summary is simple enough: the real-world complexities of California's groundwater aquifers are over-simplified by the SacFEM2013 model into no more than 25 available two-dimensional layers of uniform composition, and hence the model results are at best computational simplifications not necessarily representative of actual groundwater responses to pumping.

7

8

9

In addition to the model not being a true 3D model of the actual geometric nature of the state's groundwater resources, some other problems with the model include the following:

- The model requires considerable data manipulation to be used, and these manipulations are necessarily subject to interpretation. This fact implies that the model results depend on the choices made by the analyst, and are hence not necessarily reproducible. In other words, adjusting of the results (by accident or by design) is an inherent characteristic of the model, and that characteristic alone erodes trust in the model. There are technically-defensible ways to provide accurate assessments of how such adjustments might affect output results used in

10

decision-making (e.g., sensitivity analyses for these parameters), but these means for evaluating trust in the model are not mentioned in the EIR/EIS, and one can only conclude that they have never been performed.

- The model description in the EIR/EIS presents no validation results that can be used to provide basic quality-assurance for the analyses used in the EIR/EIS. The reader can seek information on the parent code MicroFEM, but precious little data is available on that code's capabilities, so the question of "can the results of this model be trusted?" is not answered by the EIR/EIS. An expert reviewing the EIR/EIS might seek to examine the MicroFEM code directly, but the underlying source code is not available, and the MicroFEM tool can only be purchased for a substantial fee (\$1500), so it is infeasible to gain informed public comment on the suitability of MicroFEM or SacFEM2013 without paying a substantial price.
- The model is not predictive in some aquifer responses (as mentioned above), so its results are a reflection of past data (e.g., streamflows, phreatic surface location, etc.) instead of providing a predictive capability for future events. Since accurate prediction of future environmental effects is the whole point of the EIR/EIS, the SacFEM2013 model is arguably not even suitable for use in the EIR/EIS, much less in real-world hydrological practice.

The problem of data manipulation mentioned in the first bullet above represents a serious limitation of the SacFEM2013 model. Model quality can be measured by standard quality-assurance processes utilized for software development, such as the CMM model⁵ widely used in software practice. The five stages of increasing quality in the CMM model are termed ad hoc (or chaotic), repeatable, defined, managed, and optimized, and the repeatable stage is generally accepted as the minimal level of quality appropriate for any critical analysis methodology. Since analyst intervention in data preparation creates an obvious risk of analyst dependencies in the output data used to set policy, the current SacFEM2013 workflow is likely only at the "ad hoc/chaotic" state of quality assurance for a model. This is simply not appropriate for critical analyses that are used in decision-making on such important resources as water in California.

A typical example of analyst intervention in data preparation can be found in Appendix D of the EIR/EIS⁶:

After a transmissivity estimate was computed for each location, the transmissivity value was then divided by the screen length of the production well to yield an estimate of the aquifer horizontal hydraulic conductivity (Kh). The final step in the process was to smooth the Kh field to provide regional- scale information. Individual well tests produce aquifer productivity estimates that are local in nature, and might reflect small-scale aquifer heterogeneity that is not necessarily representative of the basin as a whole. To average these smaller scale variations present in the data set, a FORTRAN program was developed that evaluated each independent Kh estimate in terms of the available surrounding estimates. When this program is executed, each Kh value is considered in conjunction with all others present within a user-specified critical radius, and the geometric mean of the available Kh values is calculated. This geometric mean value is then assigned as the representative regional hydraulic conductivity value for that location. The critical radius used in this analysis was 10,000 meters, or about six miles. The point values obtained by this process were then gridded using the kriging algorithm to develop a Kh distribution across the model domain. The aquifer transmissivity at each model node within each model layer was then computed using the geometric mean Kh values at that node times the thickness of the model layer. Insufficient data were available to attempt to

⁵ M.C. Paulk, C.V. Weber, B. Curtis, M.B. Chrissis, "Capability Maturity Model for Software (Version 1.1)". Technical Report, Software Engineering Institute, Carnegie Mellon University, 1993

⁶ EIR/EIS, Appendix D, Page 13

subdivide the data set into depth-varying Kh distributions, and it was, therefore, assumed that the computed mean Kh values were representative of the major aquifer units in all model layers. The distribution of K used throughout most of the SACFEM2013 model layers is shown in Figure D-4. During model calibration, minor adjustments were made to the Kh of model layer one east of Dunnigan Hills and in model layers six and seven in the northern Sacramento Valley based on qualitative assessment of Lower Tuscan aquifer test data in this area.

Note the presence of terms such as “adjustments”, “assumed”, “insufficient data”, and “representative”. What is being described in this paragraph is a potentially non-repeatable process that converts the three-dimensional permeability tensor into a homogenized number Kh that is then used to estimate conductivity in a plane parallel to the ground surface. Permeability is a local tensorial property of the aquifer (i.e., it varies from point to point in the 3D subsurface domain), but the resulting Kh is smeared across the domain to convert this tensor with six independent spatially-dependent components into a single number that is applied over a huge geographical area instead. And this conversion is subject to the judgment of each analyst, so the results depend on the skill (or lack thereof) of the particular analyst doing the modeling.

***Technical sidebar:** it is remarkably straightforward to perform accurate and technically-defensible computational analyses to assess the ultimate effect of these data adjustments. One of the most easily-deployed of these techniques is the use of a sensitivity analysis that measures how computed output results depend on adjustments to input parameters. Sensitivity analyses are readily grafted onto nearly any computational model, and while these computations require more effort than not using them, most of the additional effort can readily be offloaded to the computer, so that undue levels of human efforts are not required for their application. Formal sensitivity analyses can also be used to aid in the assessment of model uncertainty (see discussion below), so their omission in the EIR/EIS is a mystery to the technically-informed impartial reviewer of the EIR/EIS.*

And that’s only the tip of the larger iceberg of problems with these ad hoc techniques. It is actually quite easy to avoid all these adjustments and oversimplifications entirely, and treat the aquifer as it is, namely as a true three-dimensional physical body of large extent, with a time-varying location of the water table, and with accurate treatment of the complex hydraulic conductivity inherent to the subsurface conditions of California. It’s also remarkably simple to include poromechanical effects (see discussion below) in such a 3D model so that accurate local and regional estimates of environmental impacts such as subsidence and loss of aquifer capacity can be predicted and validated. All of this technology has been available for decades, but it is not utilized in the SacFEM2013 model. *The citizens of California clearly deserve a better model for decision-making involving one of their most precious resources!*

Regarding The Need to Characterize Uncertainty in Engineered and Natural Systems

Some discussion is warranted at this point on the difference between a natural and an engineered system, towards the goal of appreciating why characterizing uncertainty in any proposed water-transfer strategy is an essential goal of a well-considered EIR/EIS. An engineered system is designed entirely by humans, so each component of that system is reasonably well-understood *a priori*, and the uncertainties that are inherent in any system (natural or man-made) are limited to defined uncertainties such as materials chosen, geometric specifications, and conditions of construction and use. So an engineered system such as an automobile (or a groundwater-pumping facility) is uncertain in many aspects, but that uncertainty can in theory be constrained

by quality-control efforts or similar means of repeatability. Constraining these uncertainties comes at a price, of course: that is a large part of what we mean when we refer to *quality* in an engineered system such as in cars or consumer electronics.

A natural system has a much higher threshold for uncertainty, as we often do not even know of all the components of the system, much less their precise characterization (e.g., in a water-bearing aquifer, the materials that entrain the water are by definition unavailable for characterization, and the mere act of digging some of them up for laboratory inspection often changes their physical behaviors so that the tests we perform in the laboratory may not be entirely relevant to the response of the actual subsurface system). So when studying a natural system, a scientist or engineer must exercise due diligence in the examination and characterization of the system's response to stresses of operational use, and must consistently provide means to determine the presence and effect of these inherent uncertainties. To do otherwise is to risk visitation by Murphy's Law, i.e., "anything that can happen, will happen."

Thus one of the most obvious metrics for evaluating the quality of any environmental plan is to examine the plan's use of terms such as "uncertainty", as well its technical relatives that include "validation" (testing of models via physical processes such as laboratory experiments), "verification" (testing of models via comparison with other generally-accepted models), and "calibration" (tuning a model using a given set of physical data that will be used as initial conditions for subsequent verification, validation, and uncertainty characterization). These basic operations are fundamental characteristics of any computational model, and are used in everyday life for everything from weather prediction (where uncertainty dominates and limits the best efforts at forecasting) to the simple requirement that important components of infrastructure such as highway bridges be modeled using multiple independent analyses to provide verification of design quality before construction can begin.

Unfortunately, the EIR/EIS does not contain a formal characterization of model uncertainty, either for the SacFEM2013 application itself, or for the underlying data gathered to support the SacFEM2013 analyses. As described in previous sections, both the model and the input data contain simplifications that potentially compromise the model's ability to provide accurate estimates of real-world responses of water resources, and these idealizations create *more* need for uncertainty characterization, not less. And the all-important technical terms "validation" and "verification" do not appear in the EIR/EIS. The term "calibration" occurs twice⁷ with regard to groundwater models, but only in the context of ad-hoc "adjustments" of the model data.

Lack of Trust in the SacFEM2013 Model

In addition to generally-poor modeling assumptions inherent in the SacFEM2013 model, the all-important task of characterizing uncertainty in the model's implementation and data is neglected in the EIR/EIS. On page 19 of Appendix B, the reader is promised that model uncertainty will be described in Appendix D, but that promise is never delivered: the only mention of this essential modeling component occurs merely as an adjunct to discussion of deep percolation uncertainty.

⁷ EIR/EIS, Appendix D, Pages 10 and 13

This lack of any formal measure of uncertainty is not an unimportant detail, as it is impossible to provide accurate estimates of margin of error without some formal treatment of uncertainty. Many such formal approaches exist, but apparently none were deployed for the EIR/EIS modeling efforts. In simple terms, this lack of uncertainty characterization removes the basis for trust in the model results, and hence the entire groundwater substitution analysis presented in the EIR/EIS is not technically defensible. Until this omission is remedied, the EIR/EIS simply proposes that water interests in California trust a model that is arguably not worthy of their trust.

16

And it's even worse than this, as while the model is asserted to be "high-resolution", in fact the SacFEM2013 model is quite the opposite. The actual spatial resolution of the model is given in Appendix D as ranging from 125 meters for regions of interest, up to 1000 meters for areas remote from the transfer effects. Nodal spacing along flood bypasses and streams is given as 500 meters. No mention is made in the EIR/EIS of exactly what this means in terms of trust in the model, but in accepted computational modeling practice, this is not a particularly high resolution.

In fact, there are formal methods for characterizing the ability of a discretized model such as SacFEM2013 to resolve physical responses of interest. These methods are based on elementary aspects of information theory (e.g., the Nyquist-Shannon sampling theorem), and their practical result is that a discrete analog (i.e., a computer model) of a continuous system (i.e., the actual subsurface geological deposits that entrain the groundwater) cannot resolve any feature that is less than a multiple of the size of the discretization spacing. For regular periodic features (e.g., the waveforms that make radio transmission possible), that multiple can be as small as two, but for transient phenomena (e.g., the response of an aquifer), established practice in computational simulation has demonstrated that a factor of five or ten is the practical limit on resolution.

Thus the practical limit of the SacFEM2013 model to "see" (i.e., to resolve) any physical response is measured in kilometers! The model can compute results smaller than this scale, but those results cannot be implicitly trusted: they are potentially the computational equivalent of an optical illusion. For this reason alone, the SacFEM2013 model cannot be trusted without substantial follow-on work that the EIR/EIS gives no indication of ever having been performed. And thus any physical response asserted by the model's results has a margin of error of 100% if that response involves spatial scales smaller than a kilometer or more, i.e., there is little or no predictive power in the model for those length scales.

17

The additional verification effort required to gain some measure of trust in the model (i.e., refining the nodal spacing by a factor of two and four to create more refined models, and then comparing these higher-resolution results to gain assurance that no computational artifacts exist in the original model, i.e., no optical illusions are being used to set water transfer policy) is quite straightforward and is also standard practice in verifying the utility of a computational model. It is something of a mystery why this standard modeling quality-assurance technique is not presented in the EIR/EIS, but this omission provides yet-another sound technical reason to reject the results of the EIR/EIS until better modeling efforts are provided.

Technical sidebar: one important side benefit of performing verification studies by refining the finite element mesh in the spatial and temporal domains is that this extra effort provides important information as to whether the resolution of the model is sufficient. In practice, improving the resolution of a computer model is only a means to

the desired end of gaining higher fidelity, i.e., a closer approximation to reality. So what we really desire from a computer model is not resolution, but fidelity, and while it is notoriously difficult to assess measures of fidelity, verification techniques based on refining the finite element mesh do provide some measure of trust in model results. One particularly simple verification measure involves plotting the computed results for a quantity of interest (e.g., groundwater flux at some point in the aquifer) as a function of model resolution (e.g., a metric indicating the number of the elements in the model, or a representative spatial scale used) for successive refinements of the finite-element mesh. Such plots help the analyst estimate whether the results at any given resolution yield an asymptotically-accurate estimate of the best results the model can provide given its inherent modeling assumptions. When combined with validation data (e.g., model predictions compared to real-world measured data), these verification-and-validation techniques provide a more sound basis for trust in the model than the minimal motivations found in the EIR/EIS.

17

It is likely that the SacFEM2013 model may be incapable of performing these more refined higher-resolution analyses because of its underlying assumptions (e.g., idealizing the three-dimensional subsurface domain as a set of coupled two-dimensional layers), and if that is the case, then the underlying groundwater model is simply not up to the requirements of accurate regional water transfer modeling. The underlying MicroFEM model is an old simulation tool, originally written for the MS/DOS platform, and it appears to be near the practical limit of its resolution at the stated size⁸ of 153,812 nodes (compared to the maximum nodal resolution in MicroFEM of 250,000 nodes cited above). But the current generation of desktop computers can easily handle many millions of nodes for such simulations, and enterprise computers well within the budgets of government agencies are routinely utilized to model systems with hundreds of millions of nodes, so if the SacFEM2013 model is already at its limit of resolution, then it's clear that a newer, better computational model should be used to replace it.

Inadequacy of Basic Aquifer Mechanics Principles in the EIR/EIS

In addition to all the fundamental problems inherent in the SacFEM2013 model, the EIR/EIS presents a biased view of basic principles of aquifer mechanics, and this bias serves to understate the risks of serious environmental problems that have long been a bane of water policy in California. In particular, the EIR/EIS simply understates the risk of these environmental effects, beginning with its executive summary and continuing throughout the rest of the document. Here's a representative sample of the problem at its first occurrence⁹:

18

Groundwater substitution would temporarily decrease levels in groundwater basins near the participating wells. Water produced from wells initially comes from groundwater storage. Groundwater storage would refill (or "recharge") over time, which affects surface water sources. Groundwater pumping captures some groundwater that would otherwise discharge to streams as baseflow and can also induce recharge from streams. Once pumping ceases, this stream depletion continues, replacing the pumped groundwater slowly over time until the depleted storage fully recharges.

⁸ EIR/EIS, Appendix D, Page 3

⁹ EIR/EIS, Executive Summary, Page 10

The use of the adverb “fully” implies that the original storage is entirely recovered, but this is not necessarily the case. The science of poromechanics demonstrates that irreversible loss of aquifer capacity can occur with groundwater extraction, and while this physical phenomenon is explained elsewhere in the EIS/EIR, it is apparently ignored by the SacFEM2013 model, and hence it is not predicted with any degree of accuracy for use in estimating this important environmental effect. California has seen many examples of the accumulation of this environmental risk, as the readily-observable phenomenon known as subsidence is the surface expression of this loss of aquifer capacity. The small strains induced in the aquifer skeleton by groundwater extraction accumulate over the depth of the aquifer, and are expressed by the slow downward movement of the ground surface. The EIR/EIS makes little connection between groundwater extraction process modeled by SacFEM2013 and the all-too-real potential for surface subsidence, and the attendant irreversible loss of aquifer capacity. It is remarkably simple to model these coupled fluid- and solid-mechanical effects using modern computers, and it is thus a fatal shortcoming of the EIR/EIS that such a rational science-based approach to estimating these environmental risks has not been undertaken.

18

The problem is especially important during drought years, when groundwater substitution is most likely to occur. In a drought, the aquifer already entrains less groundwater than normal, so that additional stresses due to pumping are visited upon the aquifer skeleton. This is exactly the conditions required to cause loss of capacity and the risk of subsidence. Yet the EIR/EIS makes scant mention of these all-too-real problems, and no serious modeling effort is presented in the EIR/EIS to assess the risk of such environmental degradation.

Taken together with the other problems catalogued above, it is clear that the EIR/EIS does not accurately estimate potential environmental risks due to groundwater extraction. And since this component of the water transfer process is only one aspect of how water might be moved within the state, the interested reader of the EIR/EIS can only wonder what other important environmental effects have not been accurately assessed in the EIR/EIS.

19

Conclusions

The current draft version of the EIR/EIS fails to accurately estimate environmental effects likely to occur during water transfers. The model used to predict groundwater resources is flawed by being based on old technology that is apparently not up to the task of accurate large-scale modeling as combined with requisite validation measures and uncertainty characterization efforts needed to justify the use of the model. The reasons given for the use of this model do not stand up even to the most rudimentary examination, and the model neglects important environmental effects that have long been observed in California. The proposed transfers should be rejected until a more sound scientific basis can be established for prediction of all substantial environmental effects, and established practices in the use of computational models are developed and deployed in all aspects of computational prediction of those effects.

20

Comments on:

LONG TERM TRANSFERS EIR/EIS

REVIEW OF EFFECTS ON SPECIAL STATUS FISH

1. INTRODUCTION

Long term transfers represent Reclamation and San Luis Delta Mendota Water Authority's ability to move water from north of the Delta to south of the Delta using its Central Valley Project storage, conveyance, and export facilities, and associated authorities. The EIS/EIR describes the details and effects of Reclamation's actions to carry out such transfers. Water for transfers would come from stored and saved water north of the Delta that would be delivered in summer south of the Delta. The amount of water proposed for transfer by Reclamation could be up to 600,000 af (Federal Register and EIS/EIR at p. 1-5), but is likely to be over 200 thousand acre-ft. Reclamation's EIS/EIR covers myriad proposed transfers. Some additional proposed State transfers are addressed in the EIS/EIR cumulative impacts assessment.

CSPA has undertaken a review of transfers and the EIS/EIR effects analysis on special status fish species. The species addressed include Chinook salmon, Steelhead, Green and White sturgeon, and Longfin and Delta smelt. These fish all depend on Central Valley river and Delta flows and habitats for portions of their life cycles. A summary of this review is presented in this report.

1

2. SUMMARY OF CSPA COMMENTS ON SECTION 3.7

A. Effects of Transfers

1. Change in timing and amount of river flows

Table C2 shows that summer Delta inflows from the Sacramento River in dry and critical water years may increase by several thousand cfs to accommodate transfer Delta exports. With non-CVP transfers the total change is not inconsequential. With minimum river flows of 3000-5000 cfs, transfers can double river flow and Delta inflow in summer of drier years when reservoir levels are low and water deliveries are cut back. **Holding Delta outflow near minimum and nearly doubling inflow and exports warms the Delta, increases loss of Delta fishes to export pumps, and degrades freshwater and low salinity zone habitat. For more discussion of this effect see Attachments A and B.**

River flows in winter can be lower by 10-20% in dry years as previous year's transfer releases are made up by reservoir water retention. Rivers flows may be reduced by

2

3

over 1000 cfs although usually in higher precipitation months. **The refill of reservoirs the year after summer transfers reduces winter river flows and Delta inflow. The effect is greatest in drier years when river flows and reservoir releases are at a minimum. These indirect winter effects though not as dramatic as direct summer transfer effects have consequences to drier year winter river rearing and migration habitat of salmon and smelt.**

3

Overall effects from flow changes:

- **Significant negative effect on winter run salmon: (1) young rearing in lower Sacramento River in summer, (2) smolt migration in winter, (3) adult upstream migration in winter.**
- **Significant negative effect on delta smelt: (1) young rearing in the Delta in summer of drier years, (2) adults migrating upstream into Delta during winter.**

2. Changes in Delta Exports

Tables C8 and C9 show expected increases in drier year summer exports in the range of 20-60% from CVP transfers. With non-CVP transfer exports of similar magnitude, total drier year exports are near double or even more in critical years like 2014. **Higher exports increase entrainment and salvage losses of fish and degrade Delta rearing habitat (higher water temperatures, lower turbidity, and lower primary and secondary production).**

4

Overall effects from export increases in summer:

- **Significant negative effect on delta smelt: (1) from increased entrainment of young rearing in the Delta in summer of drier years, (2) from degradation of rearing habitat of young.**

3. Changes in water source

Water released from reservoirs for transfers in summer is not the same water exported from the Delta. Exports from the South Delta in summer of drier years typically take the cooler, slightly brackish, productive upper low salinity zone that has been in residence in the Delta for some time. The exported water includes nearly all the higher productivity water of the San Joaquin River that enters the Delta. Exported water is replaced by reservoir water including that released for transfers. The added reservoir water in higher Delta inflows degrades Delta habitat with fresher, warmer, clearer water.

5

Overall effects from changes:

- **Significant negative effect on delta smelt from degradation of rearing habitat of young in north, south, and west Delta, and eastern Suisun Bay.**

4. Changes in reservoir storage

As it may take several years or more to replace reservoir water released for transfers, reservoir storage is depleted by transfers in multiyear droughts. Reservoir depletion

6

over several years may reach 500,000 ac-ft or more total. Long term droughts already deplete reservoirs to the point of affecting cold water pools and winter-spring releases that benefit fish especially in droughts. Storage releases in the summer of 2014 were in fact higher than planned or believed needed to sustain transfers, other water demands, and outflow and water quality requirements. Thus the true effect of transfers on reservoir storage is unknown.

Reductions in cold water pools can lead to (1) adult salmon being susceptible to diseases from warm water, (2) delays in salmon spawning, (3) reduced survival of eggs and embryos, (4) lower young survival during rearing, and (5) and delays and lower survival of smolts during emigration.

Overall effects from reservoir storage reductions:

- **Significant negative effect on winter run salmon in multiyear droughts: (1) young rearing in lower Sacramento River in summer, (2) migrating smolts in winter, (3) eggs and embryos in summer, and (4) adults from lower winter attraction flows in multiyear droughts.**

B. Cumulative Effects

We believe the addition of water transfers places significant added burden on the special status fish species over that already imposed by climate change, drought, increasing water supply use, record-high Delta diversions, increasing demands on surface and groundwater, as well as increased demand forecasted under the BDCP. The EIS fails to address these factors, although it does mention the potential of added effects from other Central Valley transfers through the Delta (i.e., by State Water Project and non-project water) not covered by the EIS. The EIS acknowledges these effects, but simply states that the added and cumulative effects are insignificant without any analyses as to whether the severely depressed populations and habitats of special status species are potentially affected by the added stress. Based on our assessment of cumulative effects, significant added stresses would occur on the fish and their habitats:

1. Winter Run Salmon

The cumulative effects of the above stresses with addition of water transfers will put winter-run in continuing jeopardy and inhibit their recovery. Transfers reduce reservoir storage in multiyear droughts as transfer storage releases cannot be made up until wet years again occur. Low storage limits the amount of Shasta Reservoir cold water pool to sustain winter run through summer spawning, incubation, and rearing. Continuing low fall releases limits the extent of rearing habitat and early emigration cues. Higher August and September flows from reservoir transfer releases may improve early rearing habitat in the upper Sacramento River near Redding, but may also deplete the cold-water pool and send emigration cues that may push young into warmer portions of the lower Sacramento River. Low storage levels in multiyear droughts limit the available water for storage releases in winter to sustain young emigration and upstream adult migration through the Delta and Bay to and from the Pacific Ocean.

2. *Spring and Fall Run Salmon*

Lower river flows in winter and spring in drier years would effect downstream emigration success of fry to the Delta. Poor dry year Delta rearing habitat would be further degraded by lower Delta inflows. High late summer transfers would encourage early migrations and maturation of adult fall run only to subsequently be subjected to lower fall flows and higher water temperatures.

9

3. *Delta Smelt and Longfin Smelt*

Adult migration and spawning success would be negatively affected by lower Delta winter and spring inflows in multiyear droughts. Lower Delta inflow in late winter and springs of multiyear droughts will reduce survival of young smelt. Higher summer Delta inflows will reduce survival of rearing pre-adult smelt in the Delta from degradation of the low salinity zone and direct and indirect losses to higher Delta exports.

10

C. Are the Effects of Transfers Unreasonable?

Reclamation argues that the effects of transfers are not “unreasonable”. Their main argument is that the BOs state that planned summer transfers up to 600,000 ac-ft would not constitute jeopardy, and that NMFS and USFWS have “OK’d” individual transfers in summer 2014 and past years. The facts are that winter-run salmon and delta smelt populations have further declined significantly since the BOs were prepared. Based on the present situation after two recent periods of drought (6 of last 8 years being dry or critical) we believe the predicted added stress of the whole array of planned transfers is an unreasonable threat to listed salmon and smelt.

11

D. Reasonableness of Reclamation’s Assessment in EIS

As shown in Tables 2-9 and 2-10, the Proposed Action in Reclamation’s opinion would not have any significant, unavoidable adverse impacts. From our review the proposed transfers have significant potential effects that are avoidable. Our review shows that potential effects are greatest in multiyear droughts when listed fish are already under maximum stress. Many of the most significant effects can be avoided by limiting transfers in the second or later years of drought. A more detailed review might yield specific criteria or rules that would allow some transfers to occur under certain circumstances. If transfers cannot be avoided, then other types of restrictions on water supply storage or deliveries could be considered to reduce effects of transfers and risks to the listed species.

12

E. Flaws in Reclamation’s Assessment

Major flaws in Reclamation’s assessment are as follows:

- 1) Reclamation assumes delta smelt are not found in the Delta in the summer transfer season, when in fact during dry and critical years when transfers would occur most if not all delta smelt are found in the Delta (see Attachments A and B).

13

- 2) Reclamation downplays the potential total amount of all transfers, when in fact the capacity exists for transfer amounts up to 600,000 ac-ft (see EIS/EIR CHART BELOW). *“The “up to” amount of transfer water that could be made available in any year is approximately 473,000 acre-feet. However, it is unlikely that this amount of water could be transferred in any year due to Delta regulatory and other constraints.”* (Source: http://www.usbr.gov/mp/PA/water/docs/2014_water_plan_v10.pdf)
- 3) Reclamation has not assessed the effect on Delta habitat in terms of water temperature, turbidity, and location of the Low Salinity Zone.
- 4) Reclamation has failed to address population level effects on listed fish.
- 5) Reclamation has failed to follow the State Board’s recommendation: *““The key is to follow the water, not the agreements. Focus on the source of the actual water moving to the transferee. This is the water being transferred and will guide the types of changes in water rights that may be needed.”* (p 10-3 of SWRCB Guide to Water Transfers.). Reclamation has failed to identify that the water they divert for transfer in the Delta is not the water released upstream for transfer.
- 6) Reclamation has failed to assess the cumulative effects on listed fish in multi-year droughts and the consequences of adding transfers on top of emergency drought actions designed to save storage by reducing water demands, exports, and relaxing water quality standards. Reclamation failed to mention its own requests to the State Board for Temporary Urgency Changes in 2013 and 2014 including provisions to exempt transfers from the TUCs that allowed lower Delta outflow and higher salinities in the Delta in summer 2014. Neither BO allowed for transfers under these conditions.

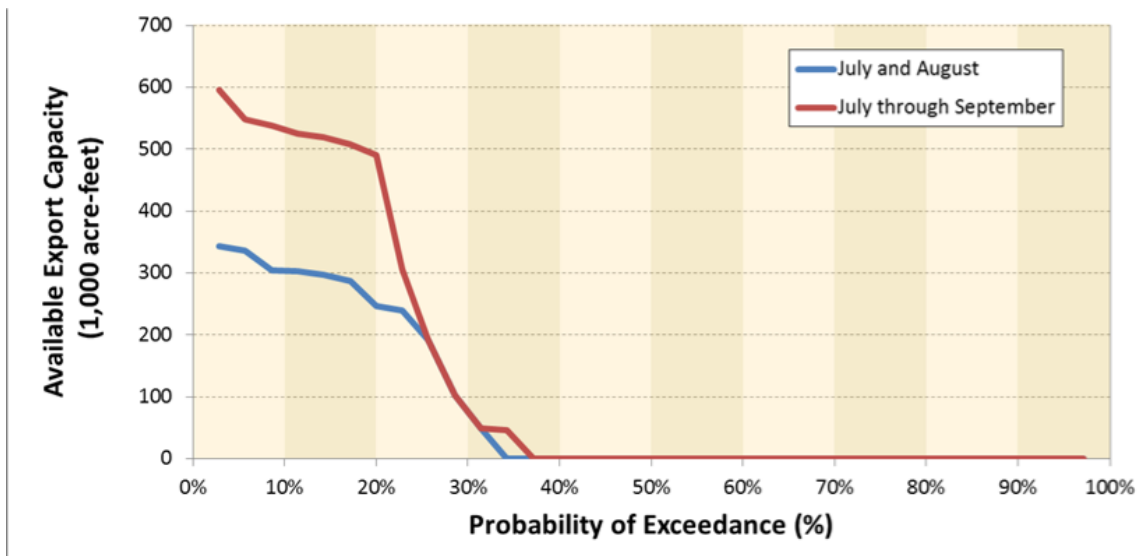
14

15

16

17

18



F. Reclamation has not followed its own rules

1. • *Transfer may not cause significant adverse effects on Reclamation's ability to deliver CVP water to its contractors.*

In 2014 Reclamation had to release more water than expected to meet export demands including transfers. The unplanned release of "extra" Shasta and Folsom storage water adversely affects Reclamation's ability to meet its contractual demands and permit requirements. For example, North-of-Delta contractors were initially threatened with a 40 percent allocation that was later changed to 75 percent delivery.

19

2. • *Transfer will be limited to water that would be consumptively used or irretrievably lost to beneficial use.*

Water diverted from the Delta is not water that would be consumptively used; it is water that would have eventually move to San Francisco Bay.

20

3. • *Transfer will not adversely affect water supplies for fish and wildlife purposes.* Transfers results in storage levels lower than predicted, which limit cold-water pools and the ability to maintain downstream "fish flows".

21

4. • *Transfers cannot exceed the average annual quantity of water under contract actually delivered.*

The amount of CVP storage necessary to meet transfer export demands may be double the contracted amount.

22

G. Comments on Impact Statements in the EIR/EIS

1. *"Water supplies on the rivers downstream of reservoirs could decrease following stored reservoir water transfers, but would be limited by the refill agreements".*

The whole subject of "refill agreements" is not adequately covered by Reclamation. The fact that it may take several years or more to refill is a significant effect not addressed.

23

2. *"Water transfers could change reservoir storage in CVP and SWP reservoirs and could result in water quality impacts."* No information as to the specific effects on Shasta, Trinity, or Folsom reservoir storage or downstream tailwater flows was provided.

24

3. *"Water transfers could change reservoir storage non-Project reservoirs participating in reservoir release transfers, which could result in water quality impacts."* The effect on reservoir and tailwater water quality in non-refill years of multiyear droughts was not addressed.

25

4. *"Water transfers could change river flow rates in the Seller Service Area and could affect water quality."* Effects on specific rivers and reaches were not addressed.

26

5. *“Water transfers could change Delta outflows and could result in water quality impacts.” “Water transfers could change Delta salinity and could result in water quality impacts.”* Specific effects on Delta water temperature, salinity, and turbidity in drought years like 2014 were not addressed.

27

6. *“Transfer actions could alter hydrologic conditions in the Delta, altering associated habitat availability and suitability”* Specific effects of transfers on Delta hydrology in drought years like 2014 were not addressed.

28

H. Specific Comments on Cumulative Impact Assessments in the EIR/EIS

“The cumulative analysis evaluates potential SWP transfers, but they are not part of the action alternatives for this EIS/EIR.” Given the difficulty of separating these actions and their effects, and that other environmental assessments and biological opinions address joint actions, we see no reason to not address the joint action of transfers through the Delta in this EIR/EIS, especially given the following EIR/EIS statement: *“Most of the pumping capacity available would be at the Banks Pumping Plant except for very dry years. Banks is an SWP facility, so SWP-related transfers would have priority. Agreements with DWR would be required for any transfers using SWP facilities.”*

29

Note: In 2013, DWR facilitated about 265 thousand acre-feet of water transfers through State Water Project facilities, nearly double the amount anticipated for CVP transfers.

http://www.water.ca.gov/watertransfers/docs/2014/Transfer_Activities_v11.pdf

I. Specific Comments on Section 3.7 Fisheries

1. *“Water transfers, which would occur from July through September, would coincide with the spawning period of winter-run Chinook salmon. However, spawning occurs upstream of the areas potentially affected by the transfers. Due in part to elevated water temperatures in these downstream areas during this period, emigration would be complete before water transfers commence in July.”* P3.7-12

30

Water transfers also come from Shasta storage releases. Downstream emigration of fry from spawning reaches near Redding commences in July and continues through September.

2. *“Summer rearing of CV steelhead would overlap with water transfers occurring in the Seller Service Area (July-September), both in the Sacramento and San Joaquin River and their tributaries (see specific tributaries listed above). Thus water*

31

transfers have the potential to affect steelhead. The majority of rearing, however, would occur in the cooler sections of rivers and creeks above the influence for the water transfers.” P3.7-14. The “majority” of rearing occurs in tailwaters, which would be affected by transfers (e.g., the lower American River tailwater below Folsom Reservoir).

31

3. *“(Delta smelt) Larvae and juveniles are generally present in the Delta from March through June. Delta smelt have typically moved downstream towards Suisun Bay by July because elevated water temperatures and low turbidity conditions in the Delta are less suitable than those downstream (Nobriga et al. 2008). Some delta smelt reside year-round in and around Cache Slough (Sommer et al. 2011). Delta smelt in Suisun Bay and Cache Slough would be outside of the influence of the export facilities.” P3-7-16. In dry and critical years, delta smelt reside primarily in the Delta in summer in the direct path of water moving across the Delta to South Delta export pumps (see Attachments A and B for details).*

32

4. Consistency of Section 3.7 with the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Section 3.7 concludes that all effects are less than significant (e.g., p37-37). Using CEQA criteria - *An alternative would have a significant impact on fisheries resources if it would:*

33

a. *Cause a substantial reduction in the amount or quality of habitat for target species. YES*

b. *Have a substantial adverse effect, such as a reduction in area or geographic range, on any riverine, riparian, or wetland habitats, or other sensitive aquatic natural community, or significant natural areas identified in local or regional plans, policies, regulations, or by CDFW, NOAA Fisheries, or USFWS that may affect fisheries resources. YES*

34

c. *Conflict with the provisions of an adopted HCP, NCCP, or other approved local, regional, or state habitat conservation plan. YES (Delta Water Quality Control Plan)*

35

d. *Cause a substantial adverse effect to any special-status species, – Have a substantial adverse effect, either directly or through habitat modifications, on any endangered, rare, or threatened species, as listed in Title 14 of the California Code of Regulations (sections 670.2 or 670.5) or in Title 50, Code of Federal Regulations. A significant impact is one that affects the population of a species as a whole, not individual members. YES (WINTER RUN, DELTA SMELT)*

36

e. *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW, NOAA Fisheries, or USFWS, including substantially reducing the number or restricting the range of an*

37

endangered, rare, or threatened species. YES (WINTER RUN, DELTA SMELT)

37

f. Cause a substantial reduction in the area or habitat value of critical habitat areas designated under the federal ESA or essential fish habitat as designated under the Magnusson Stevens Fisheries Act. YES (WINTER, SPRING, FALL, LATE FALL RUN; STEELHEAD, GREEN AND WHITE STURGEON, DELTA AND LONGFIN SMELT)

38

g. Conflict substantially with goals set forth in an approved recovery plan for a federally listed species, or with goals set forth in an approved State Recovery Strategy (Fish & Game Code Section 2112) for a state listed species. YES, RECOVERY PLANS FOR CV SALMON, DELTA SMELT, AND LONGFIN SMELT.

39

3. ATTACHMENTS

A. Summer 2014 Water Transfers

Transfers were conducted in the summer of 2014 under a Finding of No Significant Impact NEPA document. Our review of the proposed 2014 transfers is presented in Attachment A.

40

B. Summer 2014

As background on the overall effect of summer transfers, we present an assessment of the overall effect on Delta Smelt in summer 2014 in Attachment B.

Thomas N. Lippe (Bar No. 104640)
LAW OFFICES OF THOMAS N. LIPPE APC
201 Mission St., 12th Floor
San Francisco, California 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
E-mail: lippelaw@sonic.net

Michael R. Lozeau (Bar No. 142893)
Richard T. Drury (Bar No. 163559)
Douglas J. Chermak (Bar No. 233382)
LOZEAU DRURY LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel: (510) 836-4200
Fax: (510) 836-4205
E-mail: michael@lozeaudrury.com
richard@lozeaudrury.com
doug@lozeaudrury.com

Attorneys for Plaintiffs AQUALLIANCE
and CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AQUALLIANCE, a non-profit corporation, and
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE, a non-profit corporation,

Plaintiffs,

v.

UNITED STATES BUREAU OF RECLAMATION,
a federal agency, RICHARD J. WOODLEY, in his
official capacity, LOWELL PIMLEY, in his official
capacity, and DAVID MURILLO, in his official
capacity,

Defendants.

) Case No.:
)
) DECLARATION OF TOM CANNON IN
) SUPPORT OF MOTION FOR PRELIMINARY
) INJUNCTION

)
) (National Environmental Policy Act, 42 U.S.C. §
) 4321 *et seq.*; Administrative Procedure Act, 5
) U.S.C. §§ 701 *et seq.*)

I, Tom Cannon, declare:

1. I am a specialist in assessing environmental effects on fish and their aquatic habitats. I have over 40 years of experience in this field along with degrees in fisheries, biology, and biostatistics. A true and correct record of my qualifications is attached hereto as Exhibit 1.

2. I have been retained by the Law Offices of Thomas N. Lippe to provide consulting and expert witness testimony regarding the potential effects on Delta smelt of the 2014 San Luis & Delta-Mendota Water Authority Water Transfers for which the Bureau of Reclamation has approved a Finding of No Significant Impact under the National Environmental Policy Act ("NEPA").

3. My professional career has focused on estuarine fisheries ecology with experience in East Coast and West Coast estuaries including 25 years since 1977 relating to the Sacramento-San Joaquin Delta Estuary. From 1977-1980 I was project director of Bay-Delta ecological studies for PG&E's Bay-Delta power plants effects studies. From 1980-82, I was a consultant to the State Water Contractors, the National Marine Fisheries Service, and State Water Resources Control Board ("State Board") determining the effectiveness of the 1978 Bay-Delta Water Quality Standards in protecting the Bay-Delta ecosystem and striped bass population. From 1986-1987, I was a consultant to the State Water Contractors and Bureau of Reclamation during the State Board hearings on water quality standards. From 1994-1995, I was a consultant to the State Water Contractors and the California Urban Water Agencies, working on the 1995 Bay-Delta Water Quality Standards and how the new standards would affect the Bay-Delta ecosystem and its fish populations. From 1995-2003 I was a consultant to the CALFED Bay-Delta Program where I worked on various teams assessing the effects of alternative Delta operations and water supply infrastructure. From 2002-2010, I was involved in activities related to the Striped Bass Stamp Program, Salmon Hatchery Program, and Delta fish surveys funded by the US Fish and Wildlife Service to assess the effects on Delta fish and habitats. In the past decade I have worked closely with the Fishery Foundation of California, the California Striped Bass Association, and the

California Sportfishing Protection Alliance (“CSPA”) on Delta science related issues including water quality standards and the Bay Delta Conservation Plan (“BDCP”). Most recently I have reviewed the effects of the various drought-related orders of the State Water Board and the potential effects of the State's 2014 Drought Plan on the Bay-Delta Estuary’s fish populations and habitats. I obtained a Master’s Degree in Biology from Northern Michigan University in 1971 and a Masters of Public Health degree in Biostatistics from the University of Michigan in 1972.

4. In 2013 I prepared an analysis of the effects of OCAP operations on Delta smelt for the CSPA. A true and correct copy of that analysis is attached hereto as Exhibit 2.

5. In May, 2014, I prepared, for Thomas Lippe, an attorney representing CSPA and AquAlliance, an analysis of the effects of OCAP operations with the addition of the Bureau of Reclamations’ 2014 San Luis & Delta-Mendota Water Authority Water Transfers (2014 Transfers) in combination with the State Water Resources Control Board’s May 2, 2014 relaxation of standards that govern Delta flow and water quality pursuant to Order D-1641. A true and correct copy of that analysis is attached hereto as Exhibit 3.

6. On June 9, 2014, I prepared, for Thomas Lippe, an analysis of the degree to which Delta outflow as measured and regulated by the state and federal agencies that govern Delta OCAP operations, grossly overestimates actual Delta outflow, with severe consequences for Delta smelt. A true and correct copy of that analysis is attached hereto as Exhibit 4.

7. The analyses contained in Exhibits 2, 3, and 4 represent my best professional judgment regarding the matters described therein, and the opinions expressed in these reports represent my current professional opinions.

8. Delta smelt occupy the area of the Delta known as the “low-salinity zone” (“LSZ”). The LSZ is located where fresh water flowing toward San Francisco Bay mixes with salt or brackish water. The LSZ is generally centered around the areas where salinity values equal 2 parts per thousand, a value

known as X2. In the summer months in normal or wet water years, normal Delta outflows keep the LSZ, and the Delta smelt population that lives in the LSZ, in the Western Delta, where water temperatures are suitable for Delta smelt and where they are far from the water export pumps located in the South Delta.

9. In my 2013 analysis (Exhibit 2), I conclude that (1) low Delta outflows caused the LSZ (and its population of Delta smelt) to move upstream into the Central and Southern Delta, where water temperatures are significantly higher than the Western Delta; (2) releases of warm water from reservoirs upstream of the Delta (primarily Lake Shasta) in late June caused water temperatures in July in the LSZ to reach temperatures lethal to smelt; and (3) as a result, Delta smelt suffered significant mortality.

10. In my May 2014 analysis (Exhibit 3), I conclude that the 2014 Transfers, in combination with the SWRCB's May 2, 2014 relaxation of standards that govern Delta flow and water quality will exacerbate a similar increase in Delta smelt mortality because, once again: (1) low Delta outflows will cause the LSZ (and its population of Delta smelt) to move upstream into the Central and Southern Delta, where water temperatures are significantly higher than the Western Delta, and where they are more vulnerable to entrainment in the export pumps; (2) releases of warm water for the Transfers from reservoirs upstream of the Delta (primarily Lake Shasta) in the transfer period (July through September) will cause water temperatures in the transfer period in the LSZ to reach temperatures lethal to smelt; (3) will cause or increase reverse OMR flows making it more likely that any surviving smelt will be entrained in the export pumps; and (4) as a result, Delta smelt will suffer significant mortality.

11. In my June 9, 2014, letter (Exhibit 4), I conclude that Delta outflows this summer will be much lower than expected or considered in the Bureau's environmental assessment for the 2014 Transfers because the standard governing Delta outflows (i.e., minimum 3,000 cfs Net Delta Outflow Index ("NDOI") for the transfer period) grossly overestimates actual Delta net outflow. As a result,

actual outflows will be close to zero or even negative. This has severe consequences for Delta smelt, because such low outflows exacerbate the conditions that make the standard of 3,000 cfs harmful.

42

12. The Bureau of Reclamation responded to my May 2014 analysis by letter dated May 30, 2014, which included comments provided from Ms. Frances Brewster, a hydrologist, and Dr. Erwin Van Nieuwenhuyse, a biologist. (A true and correct copy of this letter is attached hereto as Exhibit 5.)

13. These reviewers fail to address my main points: that transfers under relaxed standards increase the already high risk from low outflow and exports in summer of critical years when “all” smelt are in the Delta. The main risk is degrading critical habitat by increasing already high water temperatures. My analysis shows that already-critical water temperature will increase in critical habitat habitats of smelt with transfers. All locations in the LSZ will increase in water temperature to near or above critical levels. Thus, while the temperature increases may be small in relative terms, they are critical because temperatures will be near or at lethal levels even without the transfers and relaxation of standards.

43

14. The analysis of impacts of Delta water management operations on Delta smelt involves a number of causes of impacts that must be assessed in combination with each other, not in isolation, including reduced outflow and higher flow through the Delta from transfers. There are also a number of impacts on smelt habitat from these causes, all of which interact with each other. These include higher water temperature, reverse OMR flows, more upstream location of the LSZ, and reduced food availability. My analysis includes all of these variables.

44

15. Ms. Brewster, in contrast, selects four values that are not germane to my analysis, and discusses each one in isolation, rather than in combination. Therefore, her conclusions are non-responsive.

16. **Temperature.** Ms. Brewster presents data showing that average temperature in the entire three-month transfer period is .5 degrees F higher in the Sacramento River at Rio Vista than at

45

Emmaton. This is the wrong metric for purposes of analyzing the Transfers' impact on Delta smelt. The issue is not whether the transfers under relaxed outflow standards will cause a large average difference, over a 3 month time period, between temperatures at Emmaton and Rio Vista. The issue is whether the transfers under relaxed outflow standards will cause a large enough difference in temperature to kill smelt at any time as compared to either not doing the transfers or doing them under normal outflow standards.¹

17. The U.S. Fish and Wildlife Service determination that Delta smelt warrant designation as "endangered" states: "Delta smelt tolerate temperatures ranging from 7.5 C to 25.4 C (45 to 78 F) in the laboratory (Swanson et al. 2000, p. 386, Table 1)" (Federal Register, Vol 75, No. 66., p. 17668.) Bennet's peer reviewed study states: "Water temperatures over about 25°C [77°F] are also lethal, and can constrain delta smelt habitat especially during summer and early fall (Swanson and others 2000). Overall, the majority of juveniles and adults in the TNS and MWT have been caught at water temperatures less than 22°C [71.6°F] (Figure 5)." ("Critical assessment of the delta smelt population in the San Francisco Estuary, California" (2005), William A. Bennet, John Muir Institute of the Environment, Bodega Marine Laboratory, University of California, Davis.) Among biologists, seventy-seven (77) degrees F is a commonly accepted lethal temperature for smelt. In my opinion, prolonged exposure to temperatures above seventy-five (75) degrees F is stressful to smelt.

18. In my 2013 analysis, I reported that temperatures in late June and July of 2013 reached lethal levels around July 5 in some locations and near-lethal temperatures for a prolonged period of time in many locations. The following table summarizes the data I presented in my 2013 report.

¹ As the U.S. Fish and Wildlife Service has explained, "Since 1978, delta smelt have become increasingly rare in summer and fall surveys of the San Joaquin region of the San Francisco Bay-Delta (Nobriga et al. 2008, p. 9). The primary reason appears to be the comparatively high water clarity in the region, although high water temperatures are also likely a contributing factor (Nobriga et al. 2008, pp. 8, 9)." (Federal Register, Vol 75, No. 66., p. 17669.)

Location	Temperature above 75°F	Temperature above 77°F
Emmaton	June 30- July 11	peaked at 76.9 on July 4
San Joaquin River at Antioch	July 1- 7	peaked at 76.69 on July 2
San Joaquin River at Jersey Point	June 30- July 11	peaked at 76.75 on July 5
Three Mile Slough at Joaquin River	July 1- 11	July 5
False River	June 30- July 7	July 3-5
Bacon Island at Old River	June 27- July 17	June 29-July 14
Clifton Court Forebay	June 27- July 31	June 29-July 15
Middle River at Middle River	June 27- July 31	June 29-July 17, July 24-27
Staten Island	June 27- July 15	July 1- July 10

This data shows that a half-degree increase in temperature is potentially very significant because temperatures are likely to be in the near-lethal to lethal ranges in the LSZ even without transfers and/or relaxed standards. This data also shows that using the small (but potentially significant) difference in the three month average temperature at Emmaton and Rio Vista as a metric for the Transfers' harm to smelt is not useful for predicting impacts on smelt.

19. **Entrainment.** Ms. Brewster argues that the 2008 Smelt BO does not have OMR reverse flow limits in the transfer period and that reverse OMR flows can be as high as -8000 cfs in a "typical year." These facts are irrelevant to what is happening in the summer months of dry and critically dry years (*i.e.*, 2013 and 2014) because, in a typical year, the LSZ is in the Western Delta, where water temperatures are suitable for Delta smelt and where they are far from the water export pumps located in the South Delta. One of my key points is that the 2008 Smelt BO fails to address what is happening in

the summer months of dry and critically dry years, especially under relaxed D-1641 outflow conditions. Indeed, the USFWS has conceded this point.²

20. **Smelt Food.** Ms. Brewster does not disagree with my opinion that “transfer flows will displace plankton rich, higher turbidity water with plankton poor, low turbidity water.” Instead, she asks how this phenomenon differs from normal Delta operations. The USFWS has found that “normal” Delta operations are a significant reason Delta smelt are a “threatened” species and that the “endangered” designation is warranted.³ Ms. Brewster looks at this variable in isolation, rather than in combination with other effects of the transfers under relaxed D-1641 standards. Specifically, doing the transfers under relaxed outflow standards will cause the LSZ where smelt live to be closer to the pumps than they would be in a “normal” year.

21. **LSZ Area.** Ms. Brewster argues that the area of LSZ is “essentially the same” whether X2 is at Emmaton or Three-mile Slough. This is a red herring, because my opinions are primarily based on the changed *location* of the LSZ, not its smaller areal extent.

² “Although the proposed departure from D-1641 was not anticipated in the Project Description of the BiOp, or the modeling in the biological assessment, the proposed relaxations, based on the provisions provided in the TUC Order, as amended, and existing hydrologic and biological conditions for the months of April and May appear to be within the range of effects previously analyzed in the 2008 BiOp. The Service, therefore, concurs with Reclamation's determination that the proposed modifications for April and May will have no additional adverse effects on delta smelt or its critical habitat. ¶ The Service cannot, however, concur at this time with Reclamation's determination that the proposed Plan will have no additional adverse effects on delta smelt or its critical habitat for the remainder of the project time period, June 1 through November 15, 2014.” (USFWS, April 8, 2014, p. 8, attached hereto as Exhibit 2 (emphasis added)).

³ “Based on a review of the best scientific and commercial information available, we find that destruction, modification, or curtailment of habitat poses a current and future threat to delta smelt. Operation of upstream reservoirs, increased water exports, and upstream water diversions have altered the location and extent of the low salinity zone, concentrating smelt in an area with competing fish species. Upstream reservoirs and the increased presence of *Egeria densa* have also reduced turbidity levels in rearing habitat, which may reduce foraging efficiency.” (Federal Register, Vol 75, No. 66., p. 17669.)

22. Nevertheless, since Ms. Brewster has focused attention on this value, it is worth noting that using her “Figure B-1,” it appears that when X2 moves from Emmaton (at about mile point 90 on the x-axis) to Three-mile Slough (at about mile point 93 on the x-axis), the LSZ loses about 10% of its area (i.e., about 500 of 4,500 hectares). Ms. Brewster suggests no reason, and certainly no biological reason, that 4,000 hectares is “essentially the same” as 4,500 hectares for purposes of assessing impacts on smelt.

23. Dr. Nieuwenhuyse apparently agrees with me that in the coming summer months the LSZ is going to be uninhabitable by smelt due to high temperatures and lack of food. Dr. Nieuwenhuyse suggests that this new state of affairs will not cause harm to smelt because they can find temperature and food refuge in the Sacramento Deepwater ship channel upstream of Rio Vista. I am aware of no scientific basis for this assertion. The U.S. Fish and Wildlife Service’s 2008 Smelt Biological Opinion does not suggest that the Sacramento Deepwater ship channel upstream of Rio Vista provides a viable temperature and food refuge for Delta smelt when their only recognized habitat – the LSZ in the Delta – has been rendered unsuitable for their survival by the Bureau’s water management decisions.

24. In my opinion, the effect of Delta operations this summer of confining smelt to the Sacramento Deepwater ship channel upstream of Rio Vista due to adverse environmental conditions in the LSZ that will be exacerbated by the Transfers, both with and without relaxed outflow standards, with no evidence that they can emerge from the ship channel in the fall to produce another generation of smelt, is significant new information showing that the Transfers will have significant adverse impacts on Delta smelt.

I declare under penalty of perjury that the forgoing is true and correct of my personal knowledge.
Executed this 10th day of June, 2014, in Fair Oaks, California,



Tom Cannon

EXHIBIT 1

Resume of Thomas C. Cannon

Aquatic Ecologist
5161 Oak Shade Way
Fair Oaks, CA 95628
916-988-1291 home
916-952-6576 cell
tccannon@comcast.net

Ä

EDUCATION:

Ä

University of Michigan
Fall 1965 – Summer 1969
School of Natural Resources
Major: Fisheries and Aquatic Ecology
B.S. in Fisheries

Ä

Northern Michigan University
Fall 1969 – Spring 1971
Biology Department
Majors: Biology and statistics.
M.A. in Biology

Ä

University of Michigan
Fall 1971 – Spring 1972
School of Public Health
Majors: Biostatistics and Environmental/Public Health
Masters of Public Health in Biostatistics

Ä

AFFILIATIONS:

Ä

American Fisheries Society (AFS)
CAL-NEVA Division of AFS
Fishery Foundation of California
California Sportfishing Protection Alliance

Ä

Relevant Experience:

- **Hudson River Power Plant NPDES Permit Projects – Hudson River Utilities
New York (1972-1977)**

Early in my career I participated in some of the earliest projects developed under NEPA. Most notably I participated in studies related to the continuing operations of Hudson River power plants as related to environmental impacts to Hudson River biota with emphasis on fish and water quality. I managed projects and staff, and designed and

carried out studies, analyzed data, assessed impacts, and prepared reports and NPDES permits for all major power plant complexes on the Hudson River. I participated in the related NEPA process for licensing of the Indian Point Nuclear Power Plant for the Atomic Energy Commission and Federal Power Commission.

- **Great Lakes Power Plants NPDES Permits – Detroit Edison (1976-1977)**

I managed a project preparing NPDES permit applications for all of Detroit Edison's electric generating stations on the Great Lakes.

- **PG&E Delta Power Plant NPDES Permit Project – PG&E (1977-1980)**

I managed a project preparing NPDES permit applications for all of PG&E's steam-electric generating stations in California. The project included extensive surveys of the Bay-Delta and power plant impacts on the environment. Studies were coordinated closely with the DFG and federal agencies. Studies were coordinated with the NMFS (Tiburon Office), USFWS, and the Regional Water Quality Control Boards. One of my primary responsibilities was coordination with resource and regulatory agencies.

- **Striped Bass Project – SWRCB (1981-1982)**

I was a member of the State Board's Striped Bass Project team in the early 1980's investigating the failure of the water quality control plans in halting the precipitous decline in the striped bass and other fishes of the Bay-Delta. Our chief objective was to determine whether Delta and other diversions were directly causing loss of fish through entrainment or whether there was a fundamental shift in ecosystem productivity and habitat quality that was the cause of the declines in fish populations. We identified in our report to the State Board that regardless of the cause, the D-1485 Delta standards were inadequate to protect the Bay-Delta ecosystem and important fish populations including salmon and striped bass.

- **Importance of Bay-Delta as Nursery Area for Chinook Salmon – NMFS (1981-1982)**

As a consultant to the NMFS, I conducted a review of the importance of the Bay-Delta as a nursery area for Chinook salmon and other anadromous fishes including striped bass.

- **South Fork of the American River (SOFAR) Project (1981-1982)**

As a consultant to the project developer, my engineering firm was involved in the design of the SOFAR projects. My role included preliminary permitting and agency interaction.

- **Forest Management and Timber Harvest Plan – Hoopa Indian Reservation for BIA (1982)**

As a consultant to the BIA, I participated in the development of a Forestry Management Plan for the Hoopa Indian Reservation in northern California. I evaluated potential effects of all forest management activities on salmon and steelhead and their habitat in the Klamath and Trinity Rivers, and in tributaries to those rivers on tribal lands affected by forest management activities. I spent two weeks on the reservation with reservation and BIA staff observing potentially effected habitats and planned timber management activities. During that time I became acutely aware of the growing conflict between BIA

managers and the tribes over control over reservation resources. I developed portions of the plan outlining protections to salmon and their habitat from forest management activities.

- **Alaska Oilfields Environmental Studies – ARCO/USACE (1982-1986)**

As project manager of NEPA mandated environmental programs for oil companies and the Alaska District USACE, I coordinated environmental studies that addressed environmental impacts of oil field operation on the tundra and coastal river, estuarine, and marine ecosystems. Major focus was on effects to anadromous fish and their habitat from environmental impacts allowed under USACE permits. I worked closely under the direction of an interagency oversight team to evaluate impacts, conduct monitoring programs, and to define mitigation measures for North Slope oil operations. I also coordinated with North Slope native organizations from Point Barrow to the McKenzie River in Canada. I prepared for and presided over dozens of interagency and stakeholder meetings and technical workshops, and prepared reports and scientific papers.

- **Effects of Delta Pumping Plants on Bay-Delta Ecosystem – State Water Contractors and MWD – (1981-1987)**

As a consultant to the State Water Contractors and the Metropolitan Water District, I evaluated potential effects water projects in the Central Valley. My assignments included evaluating effects of CVP operations on the American River including review of early Instream Flow Incremental Methodology studies. I participated in many interagency reviews and worked closely with DWR and DFG staff working on a Draft Two-Agency Agreement for the State Water Project. I also worked with the USBR on testimony for the 1986 Water Quality Control Plan hearings with the State Water Resources Control Board.

- **Columbia River Data Development Project – BPA (1981-1984)**

As a consultant to the Bonneville Power Authority, I participated in a comprehensive study of the Columbia River estuary. My role was as an estuarine ecologist with emphasis on fish populations and the food chain. Working with agency and university biologist, our team developed baseline information on the Columbia River Estuary and its role in salmon ecology.

- **Susitna Hydroelectric Project – Alaska Power Authority (1984-1985)**

As a consultant to the Alaska Power Authority, I participated in the process of obtaining a FERC license for a hydroelectric dam on the Susitna River in south-central Alaska. Large scale changes in river flow, sediment and water temperature regimes, and geomorphology of the river from the proposed dam indicated to all involved that major impacts to the many salmon populations of the river could be expected if the dam were built. Eventually a lack of need for power killed the project. The project allowed me for to work with engineers, hydrologists, geomorphologists, groundwater, sediment, and water quality specialists to evaluate proposed effects of development on an ecosystem scale.

- **FERC Snake River Projects (1986-1989)**

As a consultant to Federal Energy Regulatory Commission (FERC), I participated in the NEPA process and preparation of federal EIS's relating to the licensing and relicensing of hydroelectric projects on the Snake River in Idaho. My role was to develop sections on aquatic species and habitats, and to coordinate Section 7 consultations with federal and state agencies review teams. Protected species at the time included bald eagles and several aquatic snail species. Rare and isolated populations of cutthroat trout were also addressed. I was responsible for addressing state and local land use laws and plans. Instream flow requirements for the Snake River were fundamental issues. This was one of several major FERC projects in which I was involved where state water law and the ESA were in direct conflict.

A

- **USFS/FERC Skagit-Nooksack Project (1988-1989)**

Working as a consultant to the US Forest Service, I participated in the NEPA process for multiple hydropower licensing and relicensing projects for the Forest Service and FERC. Actions evaluated included changes to flow and stream habitats. Effects considered included those on sockeye salmon and bull trout, as well as Coho and Chinook salmon and steelhead populations of the Skagit and Nooksack rivers.

- **FERC Elwha Project (1988-1990)**

I participated in the NEPA process relating to the relicensing or termination of FERC licenses for two dams on the Elwha River in Washington. I evaluated the potential impacts and benefits to salmon, steelhead, and bull trout populations from various alternatives including dam removal.

- **BPA Cowlitz Falls Project (1988-1990)**

I participated in the environmental documentation for the Cowlitz Falls Project of the City of Tacoma Washington for BPA. Actions included reintroduction of anadromous salmon and steelhead to the Cowlitz River and its tributaries above existing large hydroelectric project dams and reservoirs. Concepts and alternatives developed and evaluated including trucking adult salmon and trout above reservoirs and capturing young salmon and steelhead on their downstream migration before they reached the reservoirs, and transporting them below the lower dam on the Cowlitz River. The project is one of the most successful attempts at reintroducing anadromous fish to headwaters of dammed river.

- **FERC Salt Caves Project (1989-1991)**

As a consultant to FERC, I participated in the FERC licensing project for the Salt Caves Project on the Klamath River on the border of California and Oregon. I evaluated environmental effects of alternative hydropower generation facilities on resident trout, endangered suckers, and other aquatic life of the Klamath River. The evaluation included potential effects to anadromous salmon and steelhead of the project in the event that passage was restored past downstream dams (Irongate and Copco 1 and 2). I participated in Section 7 consultations relating to bald eagle and endangered suckers. I reviewed recovery plans and actions relating to the project that could impact or benefit these

species. The primary laws and regulations governing potential project operations were those of the state of Oregon. The project was eventually not licensed by FERC because it failed to meet state water quality standards. I helped coordinate and conduct public meetings in Klamath Falls.

- **FERC Platte River Project (1990-1992)**

As a consultant to FERC, I participated in FERC licensing and related NEPA process for the Platte River Project in Nebraska. I evaluated potential effects to resident fishes, as well as special status species including paddlefish, sturgeon, whooping cranes, Arctic terns, and piping plovers - fish and birds that would be potentially affected by flow and habitat changes relating to the relicensing of the hydropower project. The Platte River Project supplied much of the agricultural water supply of central Nebraska. FERC jurisdiction and endangered species protection mandates brought project water supply objectives into direct conflict with ESA. On this and other FERC projects my team served as an extension of the FERC staff and often operated as “FERC staff” in coordinating with federal, state, and local entities, in conducting public meetings, and in preparing documentation. I presided over public meetings and technical coordinating meetings with federal, state, and local agencies, as well as stakeholders including environmental groups. Working with engineering staff I helped develop water supply and hydrology models of the Platte River. Key technical issues including land use, stream flows, and water supply were discussed and agreements worked out.

- **USACE Missouri River Master Manual Review (1991-1994)**

As a consultant to the Missouri River Division of the USACE, I spent several years developing and evaluating alternatives and preparing an EIS on alternative Master Manual Operation regimes for the Missouri River dam-reservoir system from eastern Montana to the mouth of the Missouri River. My role focused on developing alternatives and assessing effects on environmental and cultural resources including special status species such as sturgeon and paddlefish. Effects considered were to reservoir water levels, stream flows, and related effects on water quality. The project included coordination with the many tribes along the Missouri River. Many of the tribes had keen interests in recreation, water supply, cultural, and water quality issues. I prepared for and presided over public meetings and technical workshops.

- **USACE/BPA Columbia/Snake Operations Review (1992-1994)**

I participated in the Columbia/Snake Operations Review for the USACE Walla Walla District, BPA, and USBR. I worked on elements of the EIS and potential effects to project alternatives to salmon and steelhead populations of the Columbia and Snake River systems.

- **BPA/Clearwater Indian Nation Clearwater River Study (1993-1994)**

I participated in IFIM and hydrology studies on the Clearwater River to evaluate changes in flow on salmon and steelhead and their habitat on the Clearwater River in southwestern Idaho. We worked through the tribes who received grants from BPA.

- **Bay/Delta Ecosystem Effects Studies – MWD (1994-1995); CUWA (1996)**

As a consultant to the Metropolitan Water District of Southern California and the California Urban Water Agencies, I was part of a team planning development of a multispecies habitat conservation plan for the State Water Project. I was also assigned to evaluate and help improve the IEP Monitoring Program in the Bay-Delta working closely with DFG, DWR, and USBR staff. I participated in many interagency review meetings and technical workshops on the operations of the state and federal water projects.

- **PG&E Delta Power Plants HCP and EA (1997-1999)**

As a third-party consultant funded by PG&E and representing the USFWS and NMFS, I participated in the preparation of an HCP and EA for a Section 10 application to take winter-run Chinook salmon and delta smelt at two Delta power plant complexes. I evaluated the long-term effects of the facilities and future operations on Delta and anadromous fish populations. I helped prepare the HCP and EA submitted by PG&E. I met with state and federal ESA agency staff on numerous occasions to discuss conservation measures and the effects of the facilities. I also evaluated potential conflicts between the NPDES and Section 10 permits for the facilities, as well as potential for greater diversions and higher temperature thermal plumes from the plants under the new ownership and ISO/IPO system being implemented by the California Energy Commission.

- **Delta Wetlands Project – BA and ER (1996-1998)**

As a third-party consultant funded by Delta Wetlands and representing the State Board and USACE, I participated in the development of alternatives and their environmental impact evaluations for the Delta Wetlands Project in the Sacramento-San Joaquin River Delta. I participated in the evaluation of potential effects of new water diversions on Delta outflow and evaluated implications to salmon, steelhead, and delta smelt populations. I also evaluated the potential to violate water quality criteria in the Delta from island storage releases. I participated in Section 7 consultations for the project with State and federal agencies while representing the applicant, the State Board, and USACE.

- **Montezuma Wetlands Project – BA and EIR/EIS (1996-1998)**

As part of a third-party consulting team funded by the applicant and representing Solano County and the USACE, I participated in the NEPA process related to the Montezuma Wetlands Project in Suisun Marsh near Collinsville. My roles included preparation of EIS sections on potential effects and benefits to fish and their habitat in the Bay-Delta, including winter run chinook salmon and delta smelt. Our team worked with the San Francisco District of the USACE and Solano County to ensure we met the needs of these permitting agencies.

- **Lower Butte Creek Study Program – Nature Conservancy and Ducks Unlimited (CVPIA program) (1997-1999)**

As a consultant to the Nature Conservancy and Ducks Unlimited I participated in the Lower Butte Creek Study Program to evaluate potential means for improving salmon and steelhead passage through the Butte Creek system. My role was to evaluate potential fish passage problems and help to identify and promote solutions through working with local

stakeholders. I identified passage solutions and previously unforeseen problems facing downstream salmon and steelhead juveniles migrating from spawning areas in the upper watershed. The Butte Creek system has tremendous obstacles to downstream migration of young salmonids particularly in drier years – most of these problems have yet to be resolved. My activities brought me in contact with local stakeholder groups, primarily farmers, but also federal and state refuge managers who also depend on water and land for their waterfowl and wetland programs.

- **Butte Creek Parrot-Phelan Dam Project – Butte County (1998-1999)**

As a consultant to Butte County I evaluated the final facilities constructed to replace facilities lost at the Parrot-Phelan diversion site from devastating floods. The facilities were constructed under emergency authorities and Butte County asked me to review the project to ensure it was constructed appropriately under their laws and responsibilities. I noted that the screen and ladder were well designed and worked well. I noted potential problems with the flood flow bypass and associated problems for upstream passage under high flows.

- **CVPIA and CALFED EIR/EIS's – USBR/CALFED (1995-1999)**

I participated in the preparation of the EIR/EIS's for the CVPIA and CALFED programs for the USBR and CALFED. The EIS's covered many actions under the CVPIA and CALFED programs including alternatives development and evaluation. I worked on the water management strategies for both programs including the Environmental Water Account. I have worked extensively on all elements of the CALFED program and many elements of the CVPIA program. This experience has made me acutely aware of water management in the Central Valley. My previous experience with problems relating from D-1485 water quality standards, proposed D-1630 standards, and the 1995 Accord and Standards fits in well with my recent experiences dealing with conservation and recovery of fish populations in the Central Valley. I also with the Anadromous Fish Restoration Program in the evaluation of the AFRP flow recommendations for the lower American River.

- **CALFED Ecosystem Restoration Program Plan – CALFED (1995-2000)**

As a consultant to CALFED, I was one of the original designers and authors of the Ecosystem Restoration Program Plan (ERPP). I prepared individual sections on actions to be considered for specific watersheds and resources including special status fish species. One of the major features of the ERPP is its links to other ecosystem restoration programs. I participated in various watershed reviews including the American River and was the author of the draft vision for the American River. I participated in the planning and conduct of many of the CALFED meetings and workshops.

- **CALFED Conservation Strategy - (1998-2000)**

I participated in the early design and development of the CALFED Conservation Strategy developed in consultation with a team of consulting scientists. I prepared early drafts of CALFED's Adaptive Management philosophy. I worked extensively on CALFED's Multi-Species Conservation Strategy. I was the principal author of appendix plans that

included many prescriptions for conservation and recovery of all special status fish species in the Central Valley. I reviewed listing documents and recovery plans and incorporated elements into the conservation actions. I reviewed all salmon conservation and recovery actions for the Central Valley and Pacific Coast and made recommendations for modifying and adding to the overall recovery program. I also developed conservation schemes and measures for potential effects of each of the CALFED Program elements and associated actions that could affect special status fish species.

- **Delta Fish Facility Advisory and Technical Teams – CALFED/ CVP (1999-2001)**

I participated as a consultant to Delta fish facilities teams evaluating intake and fish protection facilities at the Delta Cross Channel, proposed Hood diversion, Clifton Court Forebay, and Tracy Fish Protection Facilities. As a consultant to the CALFED Delta Entrainment Effects Team, I helped in evaluating the potential effects of many options for water diversion from the Delta, including potential effects to salmon and steelhead. I prepared papers on factors affecting salvage numbers of salmon and steelhead at the state and federal pumping plants in the South Delta.

- **CVPIA Comprehensive Assessment and Monitoring Program (CAMP) – (1995-1996)**

I was an original member of the CAMP consulting team. We developed a monitoring and assessment program to evaluate whether objectives of the CVPIA would be met, particularly goals to double salmon and steelhead runs in the Central Valley. I promoted development of monitoring and assessment techniques to estimate production of wild smolts as well as adult escapement.

- **CALFED Water Management Strategy and Environmental Water Account – (1998-2001)**

I participated in CALFED's development of a water management strategy including the Environmental Water Account that would protect and enhance survival of salmon. The water management evaluation included detailed review of operations of the American River Project on flows of the American River and Delta inflow. I participated in the inter-agency gaming exercise to evaluate alternative operations of the water projects in combination with CVP and CALFED water accounts. During two years of extensive exercises I became very familiar with water project operations in the Central Valley.

- **CALFED Delta Entrainment Effects Team – (1998-2000)**

I participated as an analyst on the CALFED DEFT team to evaluate the effects of water diversions on Bay-Delta fish populations.

- **CALFED DCC-TDF – (2000-2002)**

I participated in CALFED's Delta Cross Channel and Through Delta Facility team as an analyst to evaluate the benefits and adverse effects of different operations of the Delta Cross Channel and the proposed Through Delta Facility.

- **Water Forum/EBMUD – (1997-2000)**

As a consultant to the Water Forum (EBMUD) and SAFCA I participated in the evaluation of the alternatives for American River flow and flood management and river restoration. I also helped prepare Lower American River Floodway Management Plan for SAFCA. I participated in numerous Lower American River Task Force meetings and other related meetings including the Lower American River Operations Group and Management Group. I participated in the preparation of the EIR for EBMUD's and Sacramento County's water diversion from the lower American River (since moved to Freeport on the Sacramento River). I worked on SAFCA restoration projects along the lower river and participated in temperature studies from Lake Natomas downstream through the river. As a consultant to the East Bay Municipal Utility District, I attended Water Forum public meetings and advised EBMUD on issues relating to water and habitat that would affect salmon and steelhead of the lower American River prior to the Water Forum Agreement of 2000. I participated in teams evaluating potential salmon habitat conservation and improvement projects for the lower American River. I was the principal author of SAFCA's fish habitat section of the Lower American River Floodway Management Plan. As part of that project I evaluated numerous options for conserving and improving salmon and steelhead habitat throughout the lower American River. I consulted with EBMUD to evaluate proposed conservation and habitat improvement measures of the Water Forum for the lower American. I prepared and submitted grant proposals to CALFED on behalf of SAFCA for specific habitat improvements to the lower American River. I evaluated effects of operations of USBR on the lower American River salmon and steelhead habitat and populations.

- **GCID Sacramento River Project – USACE (1999)**

I participated in the design of a monitoring program to evaluate the effectiveness of mitigation measures and project fish protection elements for the new GCID intake facility on the Sacramento River.

- **Battle Creek Hatchery Screening Project – USBR (2000)**

I participated in the design of a monitoring program to evaluate the effectiveness of new fish screens at the Battle Creek hatchery intake system on Battle Creek.

- **Yolo Bypass Ecosystem Restoration Strategy Development Project - Yolo Basin Foundation (1999)**

Working with the Yolo Basin Foundation, I prepared a grant application for local stakeholders to develop a restoration strategy to restore wildlife and fish habitat and improve salmon survival through the Yolo Bypass. I spent many hours in the bypass from the Fremont Weir in the North to the exit of the bypass on Cache Slough observing habitat conditions, land use patterns, and potential obstructions to salmon upstream and downstream passage. I identified many potential problems and opportunities to improve habitat and passage for Sacramento River salmonids. I met with individual stakeholders (including DWR and PG&E Properties) and helped obtain their support for the project. The project was funded and has begun.

- **Upper Yuba River Studies Program – CALFED (2000-2001)**

As a consultant to CALFED, I participated in the Upper Yuba River Studies Program. I prepared a monitoring program design to collect information necessary to determine if the upper watershed above Englebright Dam has habitats adequate for anadromous salmon and steelhead. I participated in CALFED workshops with participating stakeholders and the general public.

- **Lower Yuba River Studies Program – YRTWG (2000-2001)**

I have supported the Yuba River Technical Working Group in the preparation of grant applications to study fish passage problems in the lower Yuba River at Daguerre Dam. I supported the Working Group in reviewing the USACE preliminary study of Daguerre Dam. Options being evaluated are dam removal and ladder improvements.

- **Yuba River Watershed Assessment – Yuba Watershed Council, South Yuba River Citizens League (2000-2002)**

I have supported Yuba River watershed stakeholder groups in preparing grant applications for federal and state funding for watershed assessment and restoration activities. I have attended meetings with the Yuba Watershed Council and the South Yuba Citizens League. I have taken many field trips to the watershed and have identified problems including high sediment loads that threaten production of salmon and steelhead in the lower river.

- **Mokelumne River Watershed Assessment – Sierra Pacific Industries (2000-2001)**

As a consultant to Sierra Pacific Industries, I participated in the development of a watershed assessment for the upper Mokelumne River watershed properties of Sierra Pacific. The assessment focused on potential risks to water quality, sediment/erosion, and water supply from timber harvest in the watershed. We identified sub-watersheds that had the greatest potential impacts from timber harvest and identified measures to reduce environmental damage.

A

Recent Employment

- **Jones and Stokes Associates – Sacramento (1995-1999)**

At JSA I participated in numerous local and regional projects including those identified above for this time period. I also received considerable management training as well as environmental training and classes on CEQA/NEPA and CESA/ESA. I managed JSA's contracts with CALFED and participated in CALFED's consulting team.

- **Foster Wheeler Environmental – Sacramento (1999-2002)**

At Foster Wheeler I was primarily responsible for developing environmental business in northern California, Idaho, Washington, and Alaska, in addition to the pursuit of local projects identified above.

- **Fishery Foundation of California (2002-present)**

As the executive director (2002-2003) and principal investigator of the non-profit Fishery Foundation of California I helped conduct a striped bass tagging study, striped bass pen

rearing program, and hatchery salmon acclimation program, and conducted a monitoring study of Delta fish habitat at Kimball Island near Antioch. I coordinated numerous activities with California Striped Bass Association and other sportfishing groups. I managed development and implementation of monitoring surveys of SAFCA habitat restoration projects in the LAR. I was the principal investigator of CVPIA monitoring surveys of the LAR that involved determining the habitat requirements of salmon and steelhead. I coordinated with stakeholder and agency groups and participated in workshops and projects including the Lower American River Corridor Management Plan. I have become intimately familiar with the river's hydrology, water temperature regime, salmon and steelhead populations, spawning and rearing habitat, and recreational fisheries. I was project manager and principal investigator on a grant from CVPIA to study water supply opportunities for the Cosumnes River. I was a consultant to Lake Wildwood Homeowners Association in proceedings with the Regional Water Quality Control Board and DFG Region 2 on water quality control plan violations in the Deer Creek watershed, a tributary to the lower Yuba River.

- **HDR Engineering – Folsom (2003-2004)**

At HDR I was primarily responsible for developing environmental business in northern and southern California, in addition to the pursuit of local projects identified above. I also participated in water resources projects in Alaska and Nebraska. I was project manager for regional indefinite deliverable contracts I helped procure for HDR with CALTRANS. I participated in many local and regional HDR projects working closely with the water resources engineering department.

- **Wildlands Inc. - Rocklin (2004-2010)**

As manager of aquatic programs at Wildlands during the past decade I developed habitat restoration programs for Central Valley rivers under federal and state mitigation banking programs. I have worked closely with DFG, NMFS, USFWS, DWR, and SAFCA in defining opportunities for riparian and floodplain restoration. I have participated in Lower American River meetings and workshops. I have worked closely with NMFS in the development of a Conservation Banking Program in the Central Valley for listed salmonid fishes. I developed longfin smelt and Delta smelt conservation banks in the Delta and Suisun Marsh.

- **Consultant (semi-retired) (2010-present)**

Consultant on fishery ecosystem assessment programs relating to California resource management. Consultant to Karuk Tribe, Quartz Valley Indian Reservation, California Sport Fishing Protection Alliance, Cal Trout, Klamath River Keeper, Westerveld Inc, Fishery Foundation of California, and others. Participate in various workgroups and committees of these planning entities. Subjects include ecosystem restoration, Yolo Bypass, fisheries enhancement, aquatic habitat assessment, water rights, water resources development, groundwater and surface water management - review, management, reports, assessments, and analyses.

EXHIBIT 2

Ä
Ä
Ä

SUMMER 2013

The demise of Delta smelt under D-1641
Delta Water Quality Standards

Ä

Ä

Thomas Cannon
Consultant

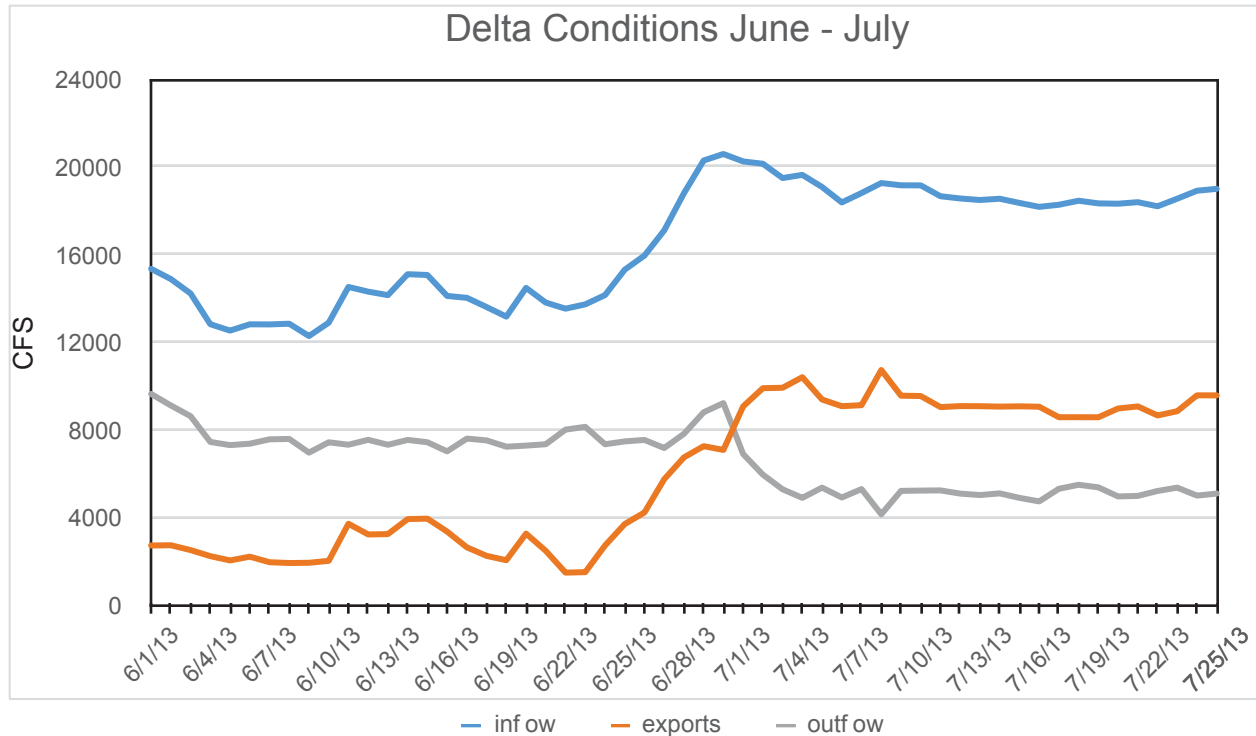
Ä
Ä
Ä

Representing
California Sportfishing Protection Alliance

Ä
Ä
Ä
Ä
Ä

August 2013

Summer 2013



Dry Year Standards Relaxed?

Despite near record low precipitation in the Central Valley in the spring of 2013, the water year remained classified as “dry,” pursuant to D-1641. The “dry year” standards for EC at Emmaton were violated in April, May and June and the EC standard at Jersey Point was violated in June. These standards were established to protect agricultural beneficial uses in the Delta.

The Department of Water Resources and the Bureau of Reclamation, fearing that water exports from the State and Federal Water Projects (Projects) would lead to violations of Delta outflow and western Delta EC standards and depletion of cold water storage in Shasta Reservoir, asked the State Water Resources Control Board on 24 May to reclassify the water year to “critically dry” and requested permission to move the temperature compliance point on the Sacramento River upstream from Red Bluff to Anderson to save the cold-water pool supply in Shasta Reservoir. The Department of Fish and Wildlife, NOAA Fisheries and US Fish and Wildlife Service submitted letters supporting the request.

While the State Board had no authority to arbitrarily change a water year classification, it informed the agencies that it “will not object or take any action if the Bureau and Department operate to meet critically dry year salinity objectives for Western and interior Delta.”

On or about June 22, the Projects began substantially increasing exports and Delta inflows, and shortly thereafter significantly reducing Delta outflow per the Delta Standards.

The D-1641 standards for a dry year (Figure 1) already allowed salinity to encroach into the West Delta at Emmaton and Jersey Point. Earlier violations of those standards in the spring had already exacerbated conditions by summer (it should also be noted that South Delta EC standards were also violated in June and July through August 15).

This report reviews conditions in the summer of 2013, the inadequacy of D-1641 dry year standards and the adverse impacts to Delta smelt caused by violation of those already inadequate standards.

TABLE 3 (continued) WATER QUALITY OBJECTIVES FOR FISH AND WILDLIFE BENEFICIAL USES						
COMPLIANCE LOCATION	INTERAGENCY STATION NUMBER(RK11)	PARAMETER	DESCRIPTION (UNIT) [2]	WATER YEAR TYPE [3]	TIME PERIOD	VALUE
DELTA OUTFLOW						
		Net Delta Outflow Index (NDOI) [7]	Minimum monthly average [8] NDOI (cfs)	All	Jan	4,500 [9]
				All	Feb-Jun	[10]
				W,AN	Jul	8,000
				BN		6,500
				D		5,000
				C		4,000
				W,AN,BN	Aug	4,000
				D		3,500
				C		3,000
				All	Sep	3,000
				W,AN,BN,D	Oct	4,000
				C		3,000
				W,AN,BN,D	Nov-Dec	4,500
				C		3,500
RIVER FLOWS						
Sacramento River at Rio Vista	D-24 (RSAC101)	Flow rate	Minimum monthly average [11] flow rate (cfs)	All	Sep	3,000
				W,AN,BN,D	Oct	4,000
				C		3,000
				W,AN,BN,D	Nov-Dec	4,500
San Joaquin River at Airport Way Bridge, Vernalis	C-10 (RSAN112)	Flow rate	Minimum monthly average [12] flow rate (cfs) [13]	C		3,500
				W,AN	Feb-Apr 14 and	2,130 or 3,420
				BN,D		1,420 or 2,280
				C	May 16-Jun	710 or 1,140
				W	Apr 15- May 15 [14]	7,330 or 8,620
				AN		5,730 or 7,020
				BN		4,620 or 5,480
				D		4,020 or 4,880
				C		3,110 or 3,540
				All	Oct	1,000 [15]

Figure 1a. D-1641 EC Water Quality Objectives Table 2.

TABLE 2
WATER QUALITY OBJECTIVES FOR AGRICULTURAL BENEFICIAL USES

COMPLIANCE LOCATION	INTERAGENCY STATION NUMBER (RKI [1])	PARAMETER	DESCRIPTION (UNIT) [2]	WATER YEAR TYPE [3]	TIME PERIOD	VALUE
WESTERN DELTA						
Sacramento River at Emmaton	D-22 (RSAC092)	Electrical Conductivity (EC)	Maximum 14-day running average of mean daily EC (mmhos/cm)		0.45 EC April 1 to date shown	EC from date shown to Aug 15 [4]
				W	Aug 15	----
				AN	Jul 1	0.63
				BN	Jun 20	1.14
				D	Jun 15	1.67
				C	----	2.78
San Joaquin River at Jersey Point	D-151 (RSAN018)	Electrical Conductivity (EC)	Maximum 14-day running average of mean daily EC (mmhos/cm)		0.45 EC April 1 to date shown	EC from date shown to Aug 15 [4]
				W	Aug 15	----
				AN	Aug 15	----
				BN	Jun 20	0.74
				D	Jun 15	1.35
				C	----	2.20
INTERIOR DELTA						
South Fork Mokelumne River at Terminus	C-13 (RSMKL08)	Electrical Conductivity (EC)	Maximum 14-day running average of mean daily EC (mmhos/cm)		0.45 EC April 1 to date shown	EC from date shown to Aug 15 [4]
				W	Aug 15	----
				AN	Aug 15	----
				BN	Aug 15	----
				D	Aug 15	----
				C	----	0.54
San Joaquin River at San Andreas Landing	C-4 (RSAN032)	Electrical Conductivity (EC)	Maximum 14-day running average of mean daily EC (mmhos/cm)		0.45 EC April 1 to date shown	EC from date shown to Aug 15 [4]
				W	Aug 15	----
				AN	Aug 15	----
				BN	Aug 15	----
				D	Jun 25	0.58
				C	----	0.87

Figure 1b. D-1641 Flow Water Quality Objectives Table 3.

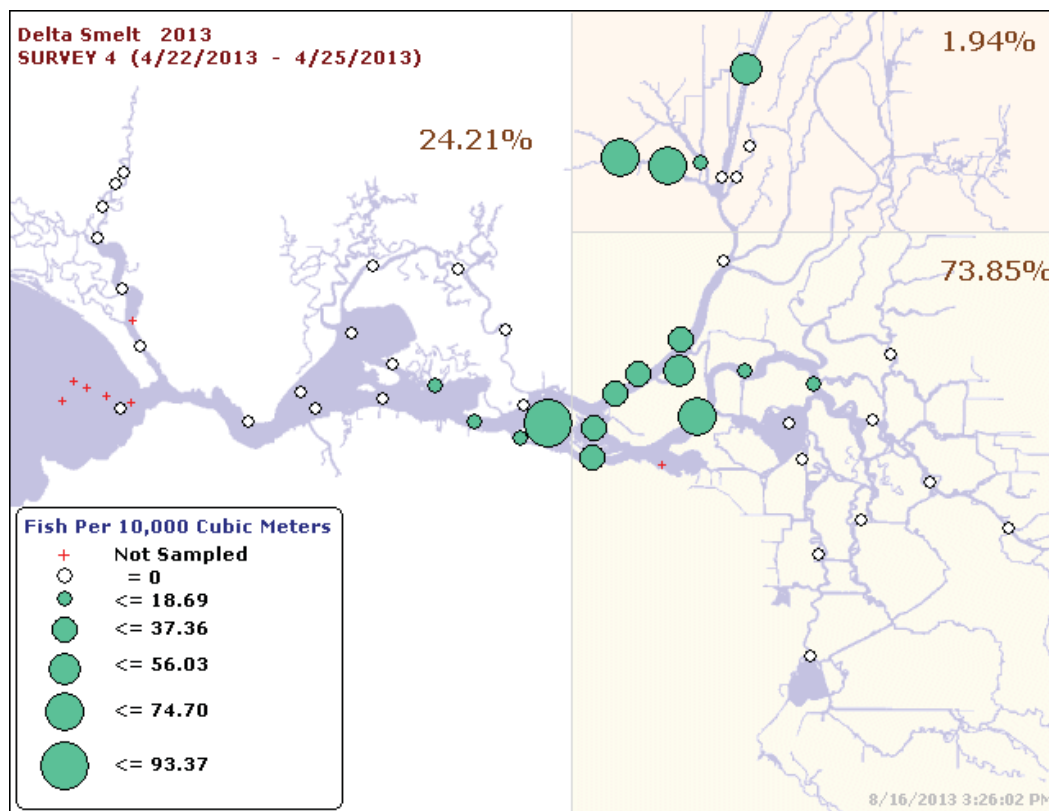


Figure 2. Late-April 2013, 20-mm Smelt Survey results. (Source: <http://www.dfg.ca.gov/delta/data/20mm/>)

Delta Smelt in April

Although not the subject of this report, spring conditions set the stage for summer. April 2013 was a tough time for smelt. Sacramento River inflow to the Delta dropped to only 6,000 cfs, San Joaquin inflows were 1500-3000 cfs, exports were up to 2,500-3,000 cfs, and outflow was as low as 6,000 cfs. Old and Middle River OMR flows were -1000 to -4000 cfs. The Delta Cross Channel was closed.

Over the past 20 years, the late April – early May period had been under the protection of VAMP (Vernalis Adaptive Management Program) experiment, but these protections ended in 2010. This year, without these protections, late April exports climbed to 2,500-3,000 cfs reaching 4,000 cfs in early May (from 1500 cfs cap under VAMP). This increase in exports without the VAMP export cap occurred under lower inflows, outflows, and negative OMR flows. Nearly three quarters of the Delta smelt population was in the Central and Western Delta (20-mm survey, Fig. 2) and thus subject to being exported (especially with negative OMRs with the DCC closed). Most of the smelt were not of salvageable size (they were only 10-25 mm), so they were entrained in the export water likely in large numbers (hundreds of thousands per day were moving into Old River toward pumps).

Despite these horrible conditions many still survived in the western Delta under the modest outflows and thus became subject to summer conditions.

Delta Smelt in Mid June

In mid June 2013 the small remnant population of delta smelt surviving in the San Francisco Bay-Delta after the below-normal water year of 2012 and poor spring conditions described above were spread through their usual dry-year habitats in the western Delta, eastern Suisun Bay, Montezuma Slough, and the Cache Slough/Bypass/Ship Channel complex in the north Delta (Figure 3).

Other than the north Delta group, most of the smelt were in their summer low-salinity zone (LSZ) home where salinities are low (0.5-5 ppt) and water temperature optimal (about 20C). With the protective dry-year EC standard of 0.45 through June 15, the LSZ was in eastern Suisun Bay west of the Delta.

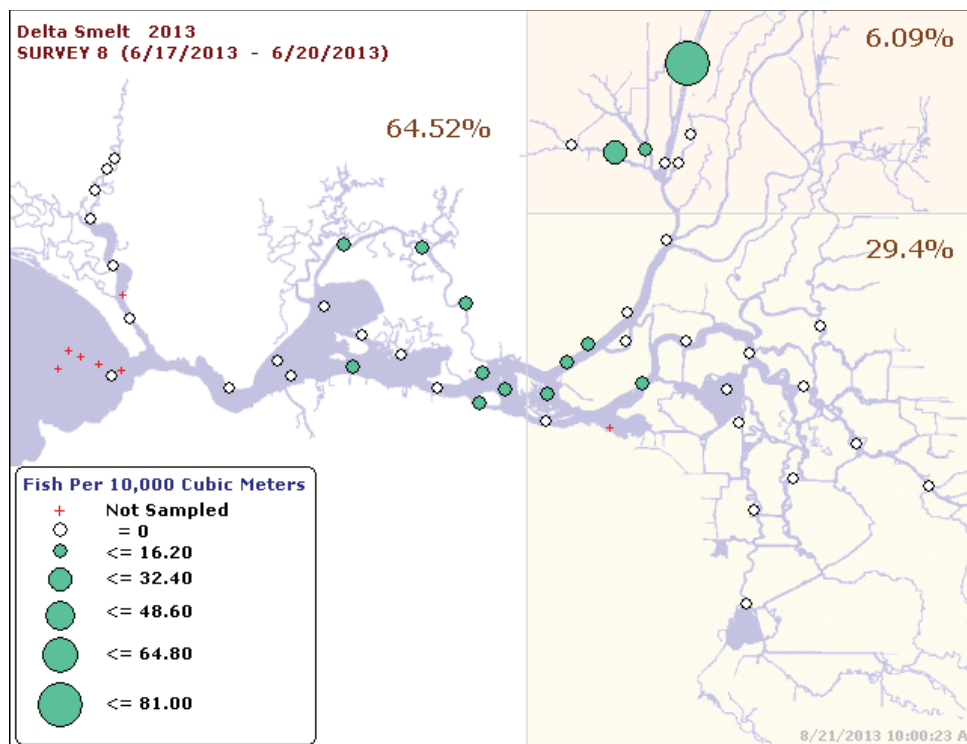


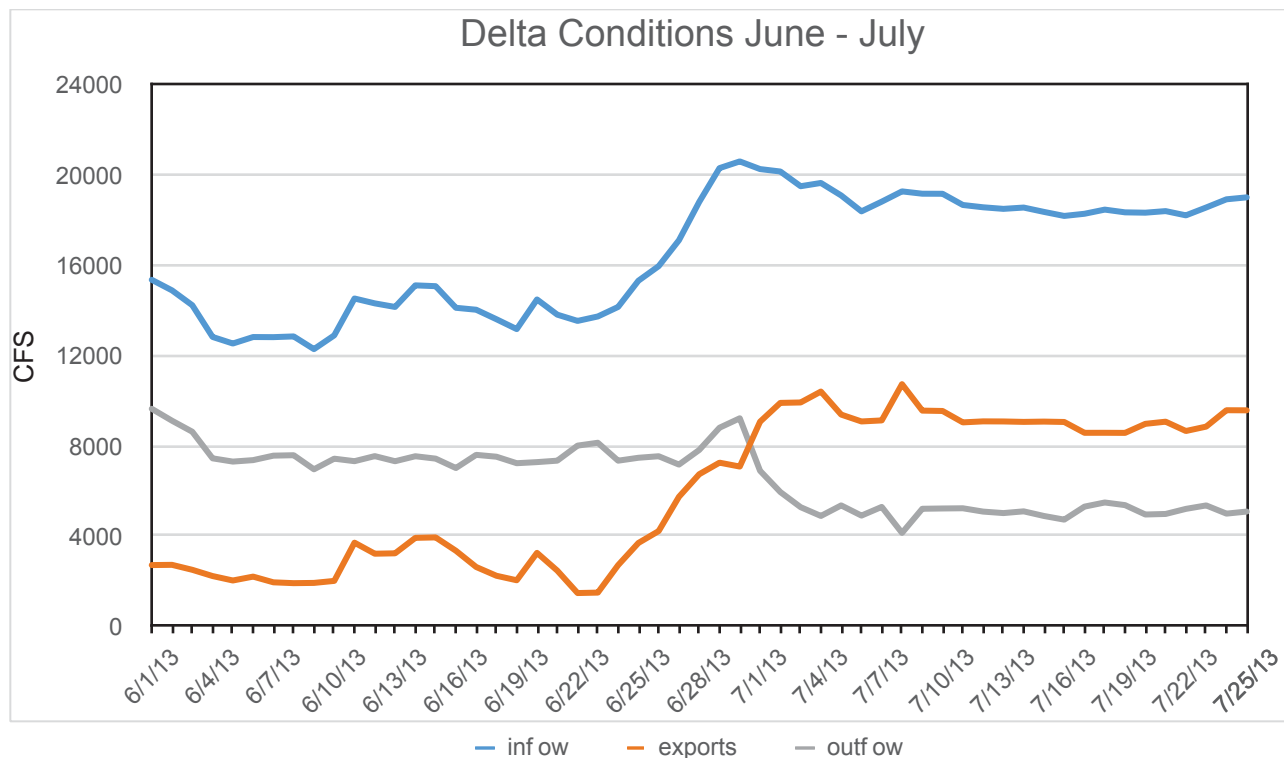
Figure 3. Mid-June 2013, 20-mm Smelt Survey results. (Source: <http://www.dfg.ca.gov/delta/data/20mm/>)

Summer Flow and Salinity Conditions

Beginning in the third week in June, inflow increase from the 12,000-14,000 cfs level to 20,000 cfs and exports increased from 2,000 to 10,000 cfs (Figure 4). A week later Delta outflow was reduced to 5,000 cfs.

West Delta

The effect is seen in the EC patterns at Emmaton and Jersey Point in the west Delta (Figures 5a and 5b). As outflow declines, salinities (EC) increase. The LSZ with its 500-6000 EC signature moved upstream into the West Delta with each incoming tide. In contrast, in wet year 2011, outflow was maintained at 8000 cfs and the LSZ did not move upstream into the Delta (Figure



5c).

Figure 4. June through July 2013 Delta inflow, outflow, and exports. Summer EC standards kick in after mid June.

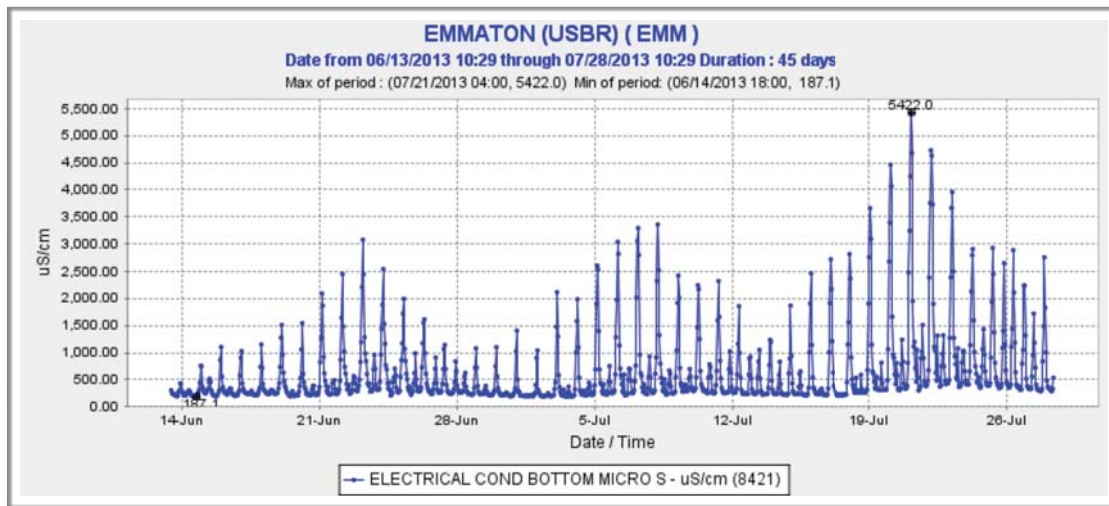


Figure 5a. Conductivity (EC) at Emmaton on lower Sacramento River in West Delta after mid June 2013. (Source: CDEC)

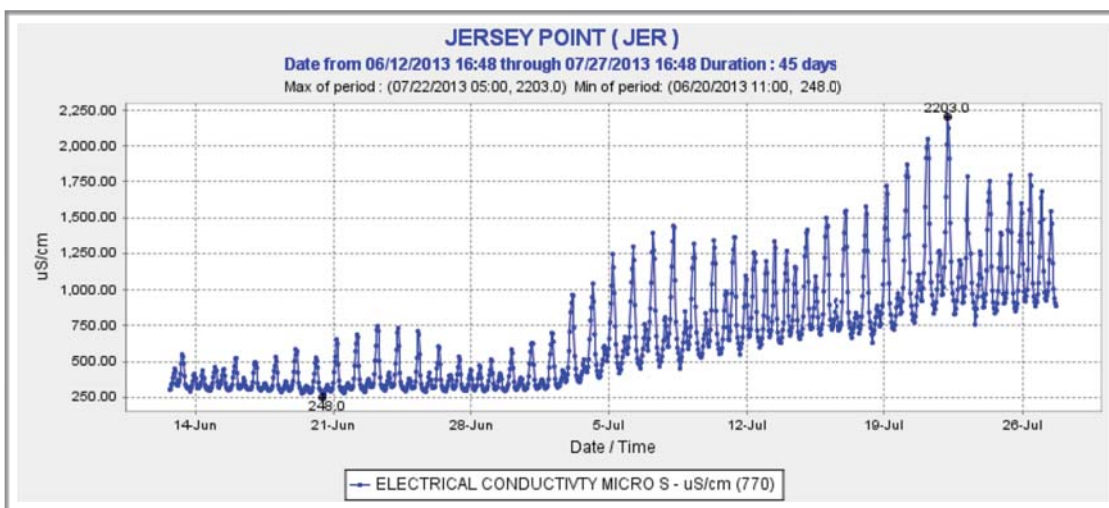


Figure 5b. Conductivity (EC) at Jersey Point on lower San Joaquin River in West Delta after mid June 2013. (Source: CDEC)

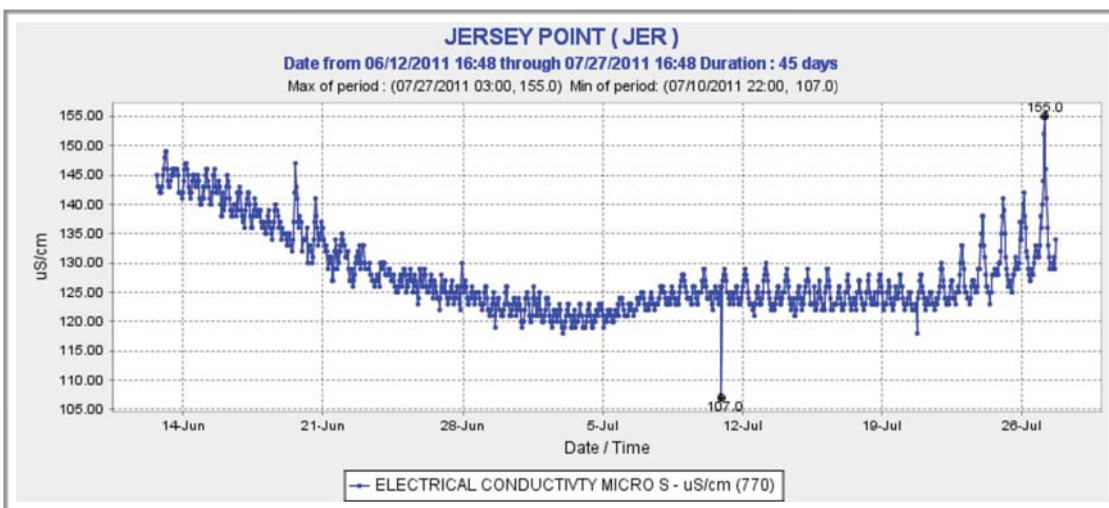


Figure 5c. Conductivity (EC) at Jersey Point on lower San Joaquin River in West Delta after mid June 2011. (Source: CDEC)

Eastern Suisun Bay

Salinity (EC) in Eastern Suisun Bay at Collinsville on the north and Pittsburg on the south also increased at the beginning of July with the decrease in outflow (Figures 6 and 7). At high tide the LSZ was well upstream of the two locations by early July. The lower end of the LSZ did extend downstream to these locations during low tides through July.

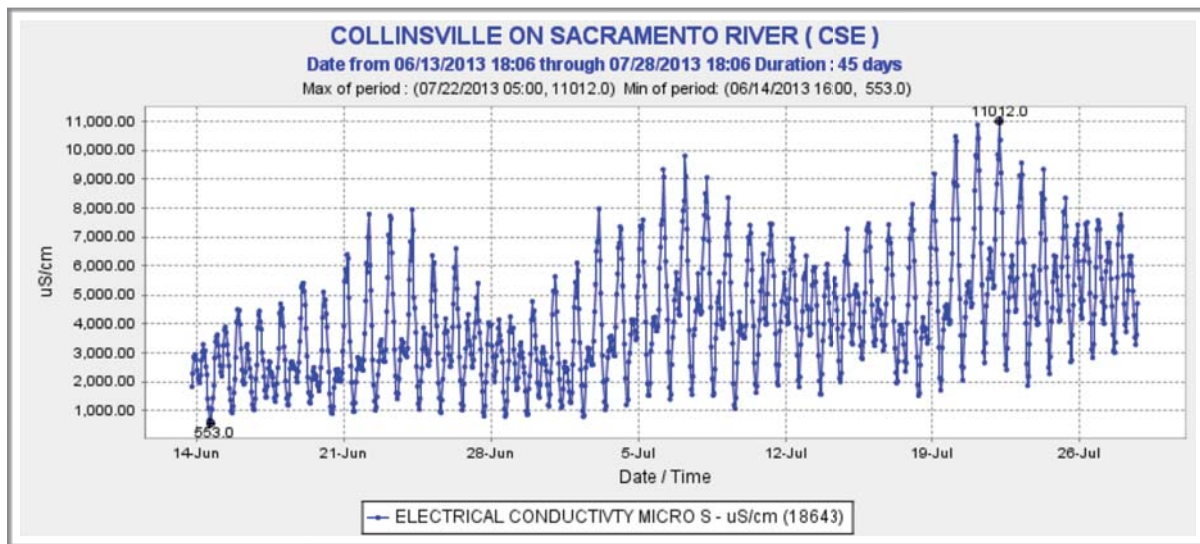


Figure 6. Conductivity (EC) at Collinsville in Eastern Suisun Bay after mid June 2013. (Source: CDEC)

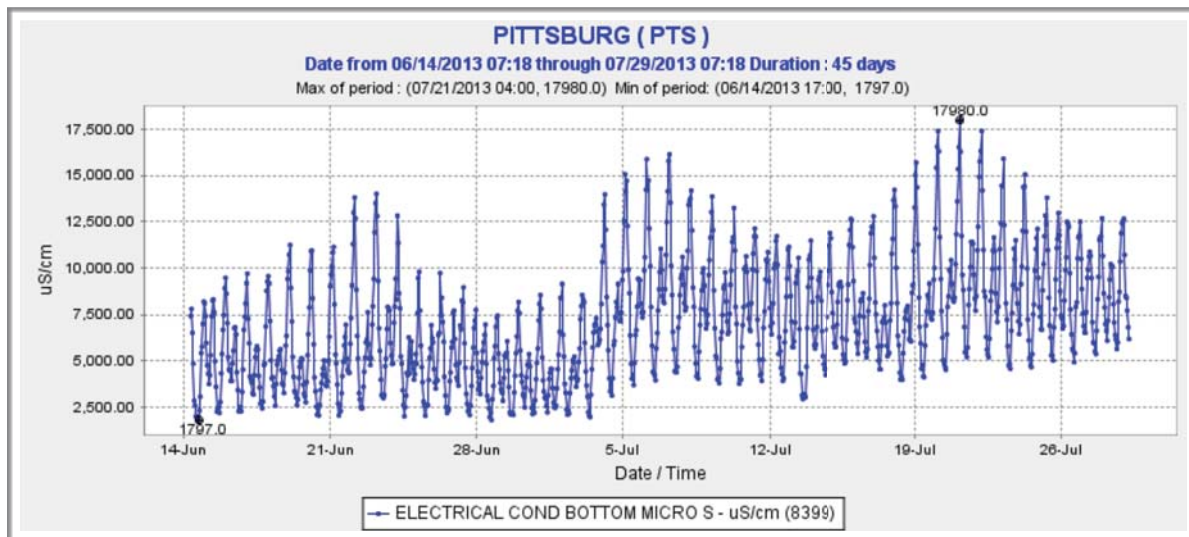


Figure 7. Conductivity (EC) at Pittsburg in Eastern Suisun Bay after mid June 2013. (Source: CDEC)

Central Delta

Central Delta EC as measured Threemile Slough on the San Joaquin River (Figure 8) and False River (Figure 9) also shows the movement of the LSZ upstream coincident with the reduction in Delta outflow at the beginning of July.

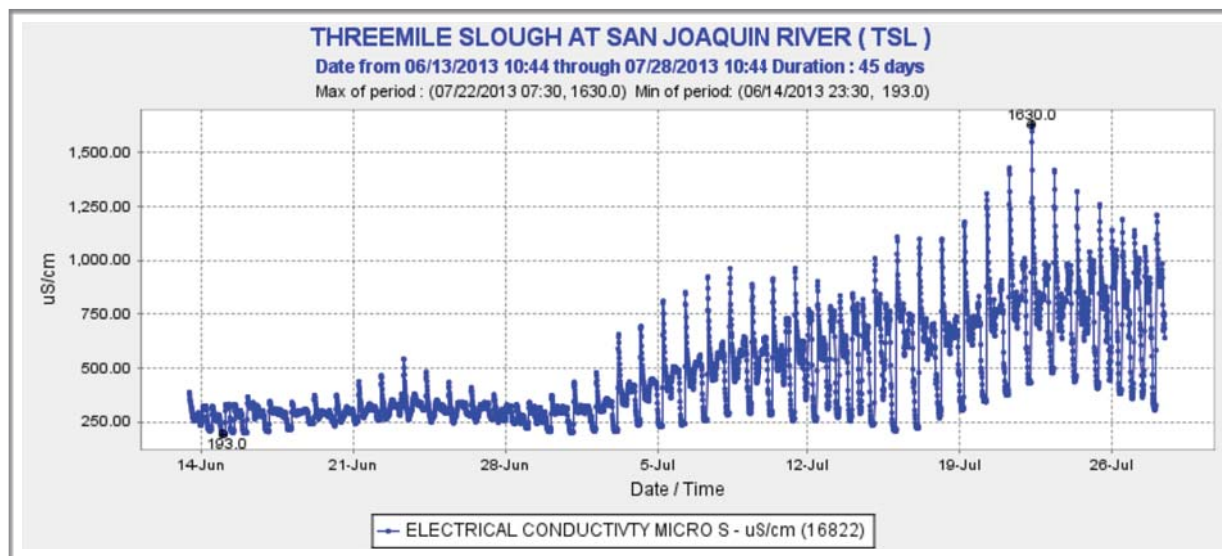


Figure 8. Conductivity (EC) at Threemile Slough in the Central Delta after mid June 2013. (Source: CDEC)

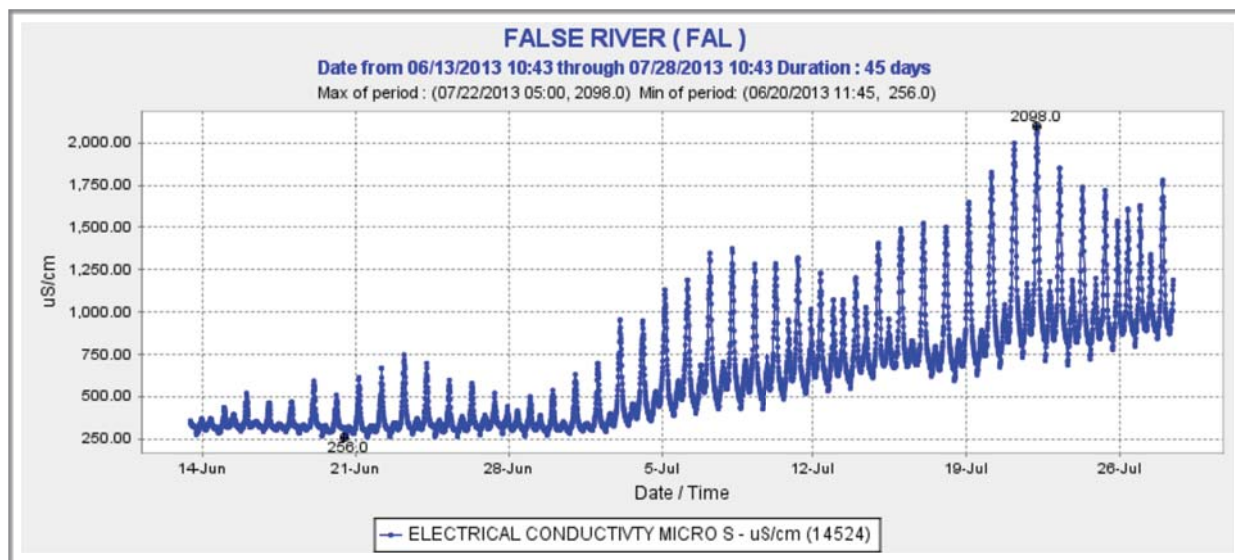


Figure 9. Conductivity (EC) at False River in the Central Delta at Franks Tract after mid June 2013. (Source: CDEC)

South Delta

South Delta EC also increased as the upper portion of the LSZ was mixed with cross Delta moving freshwater Sacramento River on the way to the export pumps. Salinity gradually increased in Old River as the head of the LSZ actually moved into the South Delta toward the export pumps (Figure 10).

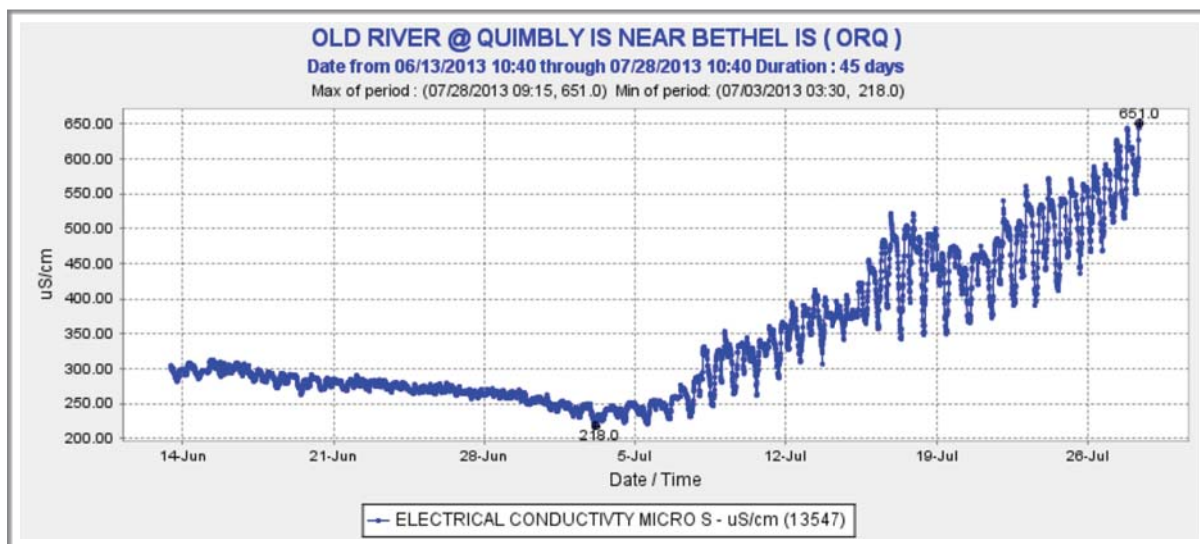


Figure 10. Conductivity (EC) in Old River in the Central Delta near Bethel Is after mid June 2013. (Source: CDEC)

Salinity in Clifton Court Forebay was slightly less as Forebay water is a mixture of Old River, Middle River, and East Delta waters of lower salinity (Figure 11).

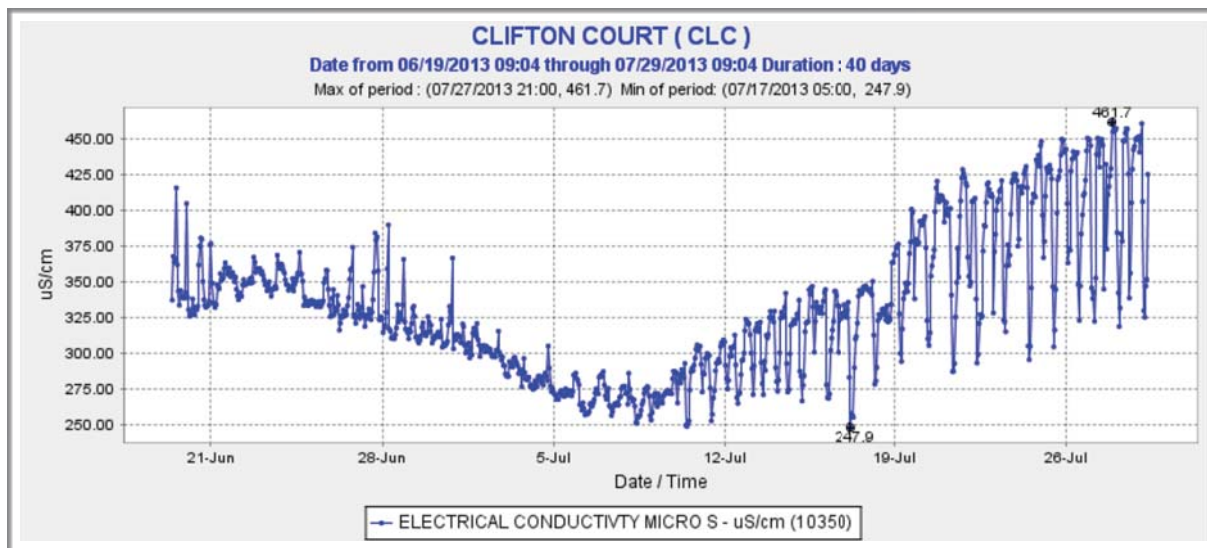


Figure 11. Conductivity (EC) in Clifton Court Forebay after mid June 2013. (Source: CDEC)

Summer Water Temperatures

Western Delta

Water temperatures reached near lethal levels for smelt (75-77F) in the western Delta by the beginning of July (Figures 12-14). Water temperatures rose sharply in late June due to the combination of warm air temperatures and sharply higher Delta inflows. Water temperatures declined thereafter through mid July with lower air temperatures, lower Delta inflows, and cooler waters moving upstream from Suisun Bay with lower outflows.

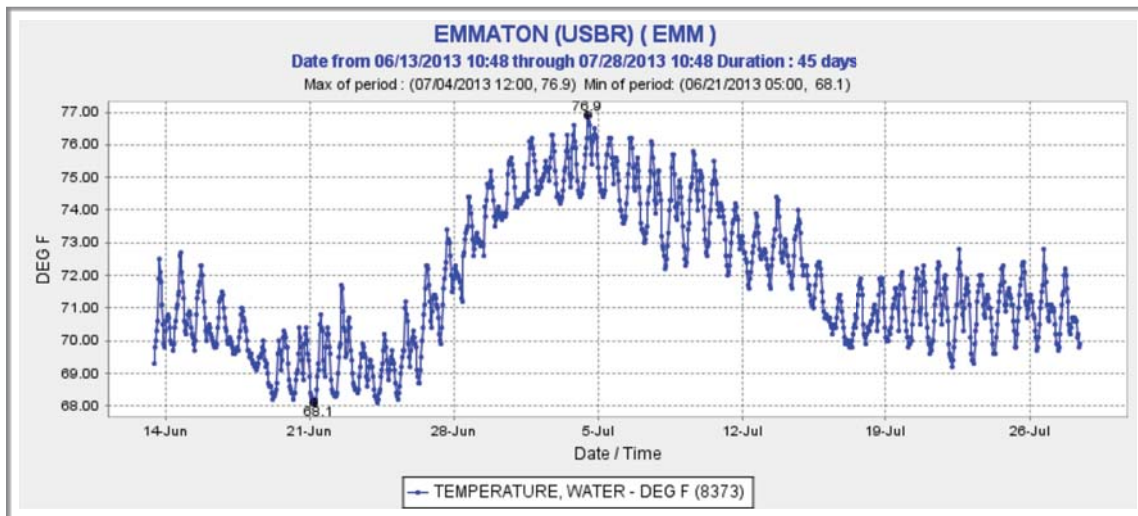


Figure 12. Water temperature at Emmaton mid June through July 2013. (Source: CDEC)

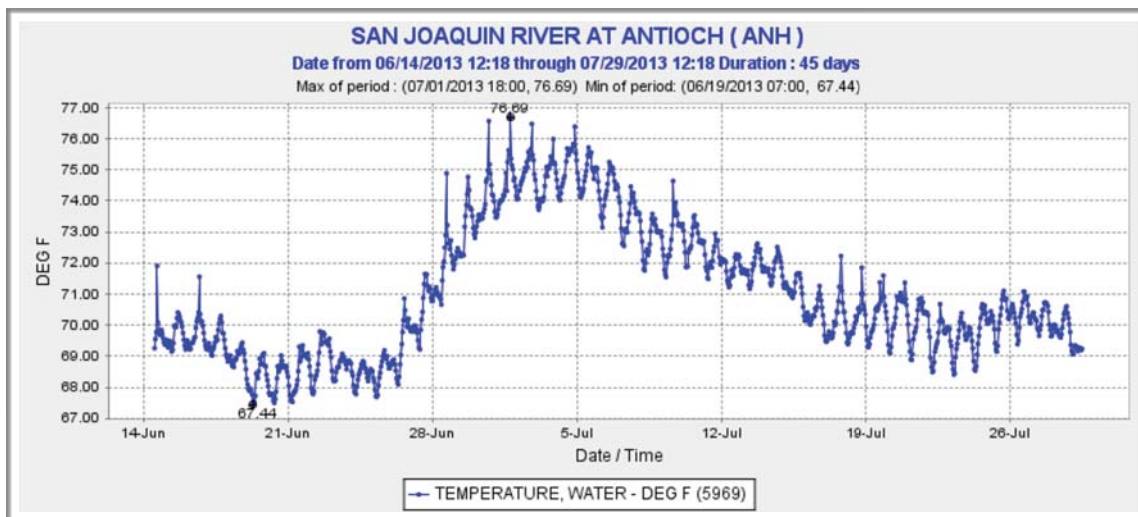


Figure 13. Water temperature at Antioch mid June through July 2013. (Source: CDEC)

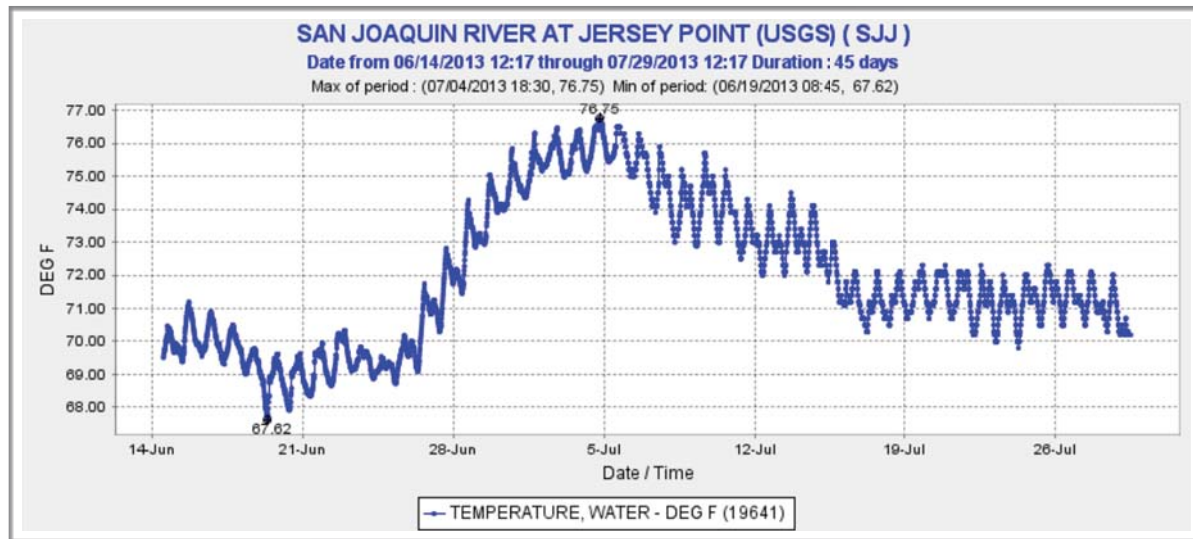


Figure 14. Water temperature at Jersey Point mid June through July 2013. (Source: CDEC)

Central Delta

Water temperatures reached near lethal levels for smelt (75-77F) in the Central Delta by the beginning of July (Figures 15 and 16). Water temperatures rose sharply in late June due to the combination of warm air temperatures and sharply higher Delta inflows. Water temperatures declined thereafter through mid July with lower air temperatures, lower Delta inflows, and cooler waters moving upstream from The West Delta with lower outflows.

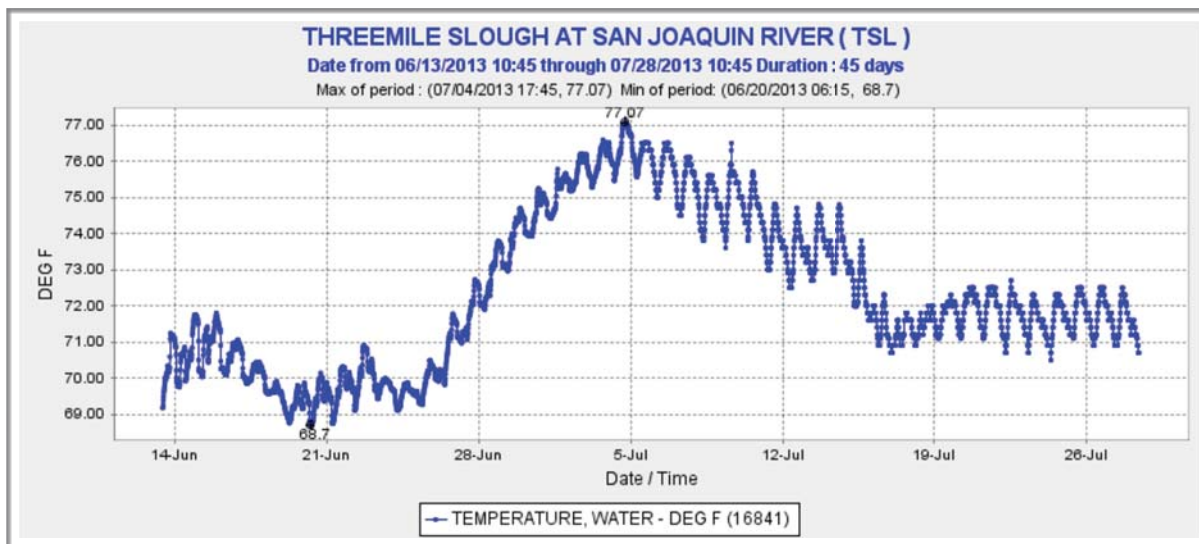


Figure 15. Water temperature at Threemile Slough mid June through July 2013. (Source: CDEC)

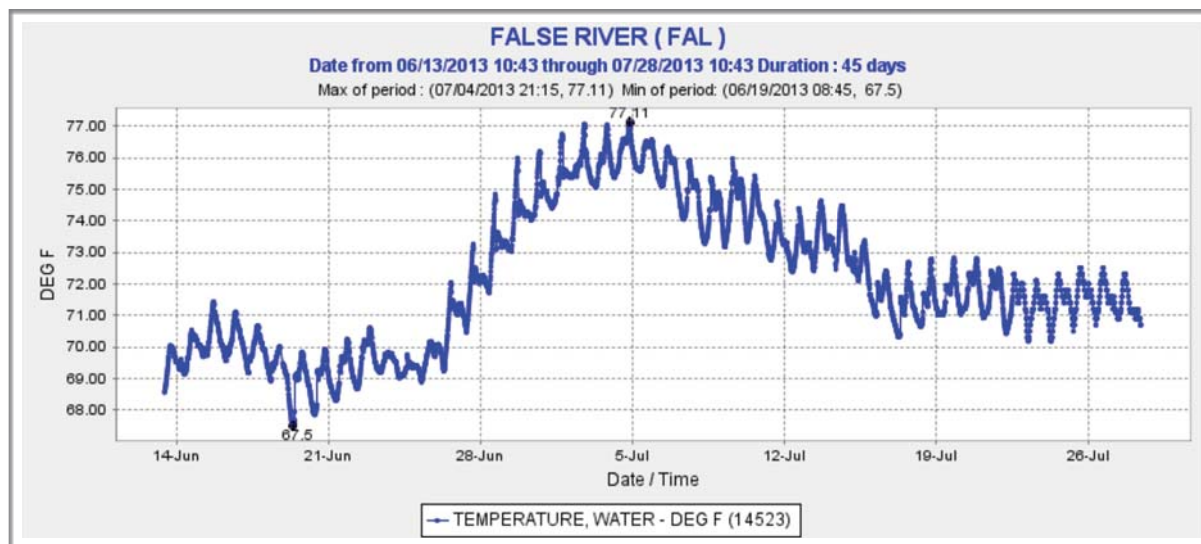


Figure 16. Water temperature at False River mid June through July 2013. (Source: CDEC)

South Delta

Water temperatures reached lethal levels for smelt (78-80°F) in the South Delta by the beginning of July (Figures 17-18). Water temperatures rose sharply in late June due to the combination of warm air temperatures, sharply higher Delta inflows, and higher exports drawing warm water into the South Delta. Water temperatures declined thereafter through mid July with lower air temperatures, lower Delta inflows, and cooler waters moving into the South Delta from the western and central Delta with lower outflows.

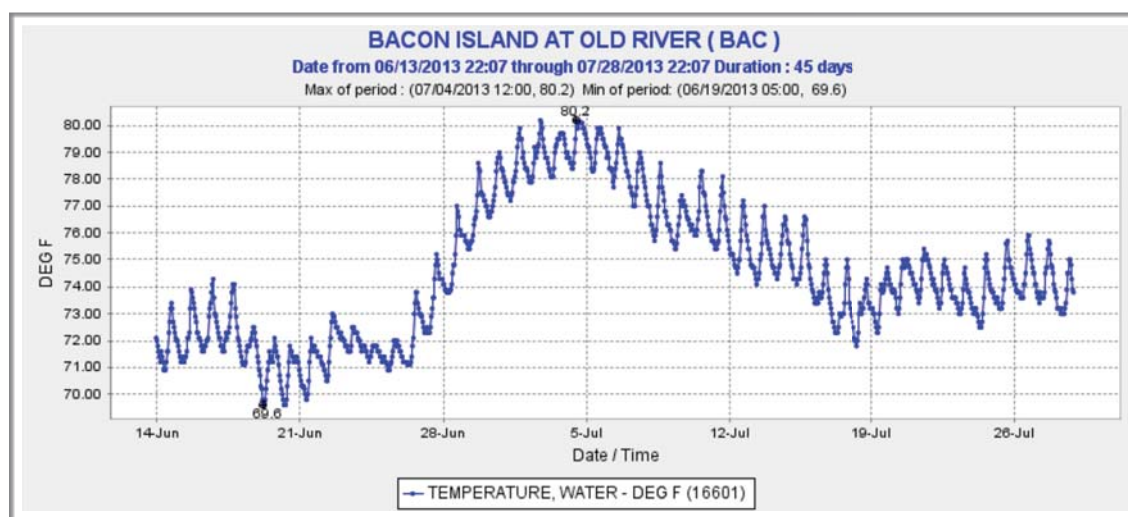


Figure 17. Water temperature in Old River near Bacon Is mid June through July 2013. (Source: CDEC)

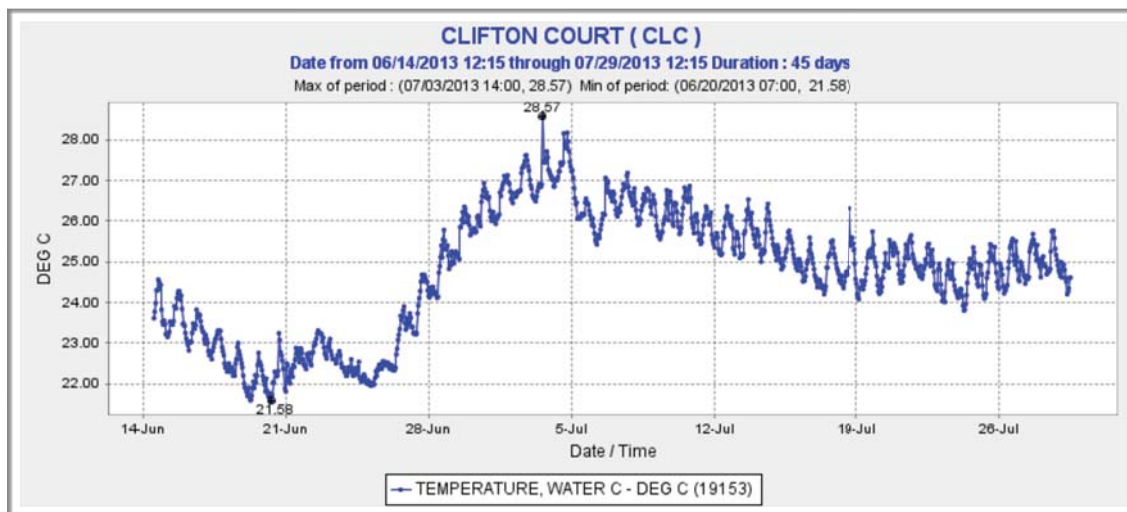
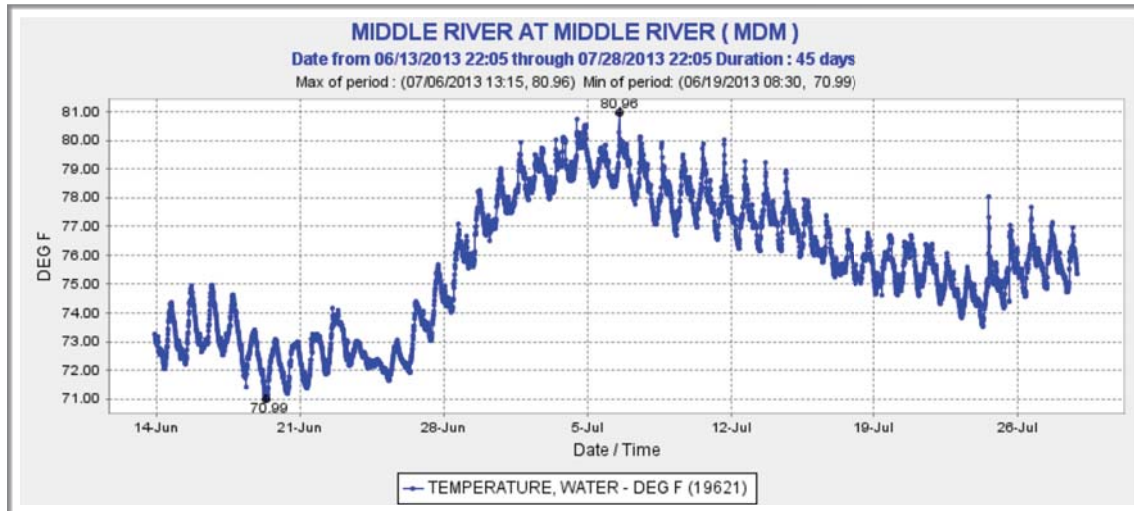


Figure 18. Water temperature in Clifton Court Forebay near Byron mid June through July 2013. (Source: CDEC)

Eastern Delta

Water temperatures in the eastern Delta also reached lethal levels of 80-81F (Figures 19 and 20).

Figure 19. Water temperature in Middle River mid June through July 2013. (Source: CDEC)



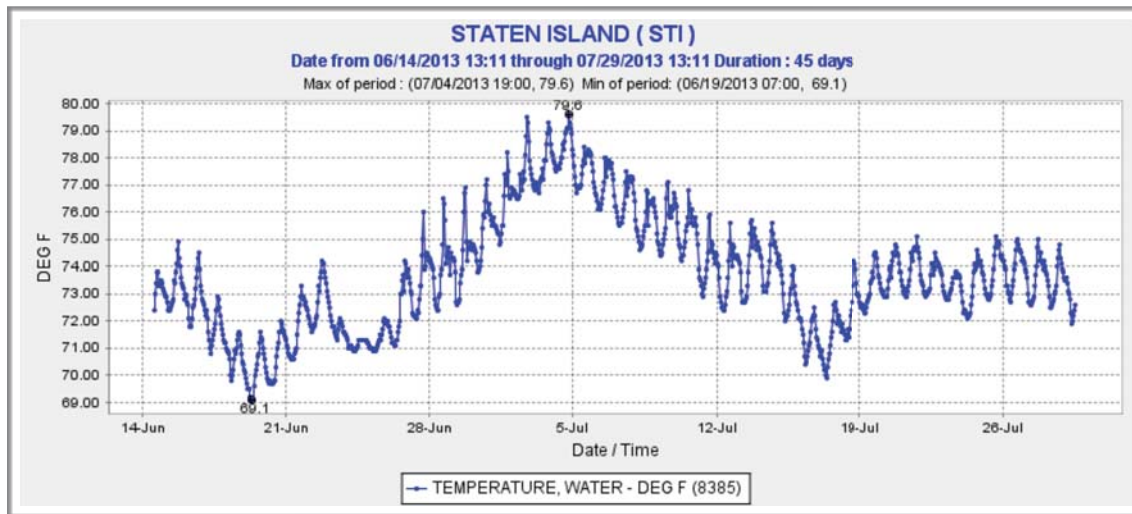


Figure 20. Water temperature near Staten Island mid June through July 2013. (Source: CDEC)

Delta Smelt Vulnerable

With the LSZ reaching into the Central and South Delta at high tides at a greater frequency through July than in wetter years it begs the question as to why were not more smelt salvaged. Clearly small salvage events occurred through mid June coincident with small pulses of exports (Figure 21). But, why not after mid June?

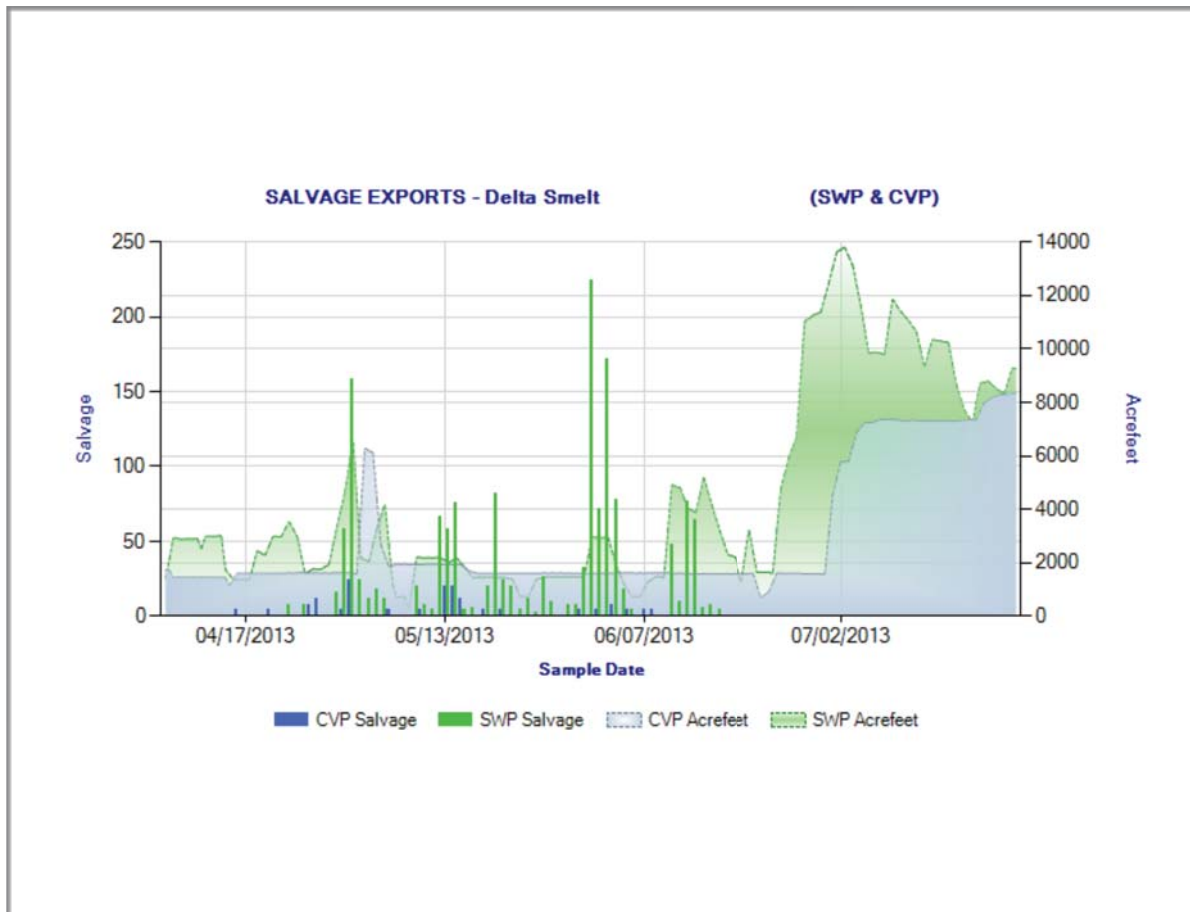


Figure 21. Delta exports and smelt salvage In spring and summer 2013. (Source: USBR MP)

First, the high inflows, low exports and high outflows kept the LSZ away from the influence of the pumps toward the end of June. Until about 8 July export demand was satiated by the pool of freshwater left over in the Delta from prior high inflows as observed in Clifton Court Forebay EC (Figure 11). But soon thereafter evidence of the LSZ being drawn to the pumps was apparent.

So why were no smelt salvaged after exports picked up and the LSZ entered the Central Delta? The answer is high water temperatures by early July. No smelt were able to survive passage to the

South Delta export salvage facilities because of lethal water temperatures in the Central and South Delta.

The high exports and high inflows at the end of June and beginning of July not only pulled the LSZ upstream into the Central Delta and under influence of the South Delta pumps at Clifton Court Forebay, but it also lead to a sharp increase in water temperature throughout much of the LSZ that was lethal to delta smelt (77-80F or 25-27C). Warm weather occurred at the beginning of July throughout the Delta (but reaching over 100F to the north and east), along with nearly a week of 20,000 cfs inflow (from the north and east) with high ambient water temperature, and near 10,000 cfs exports resulted in near lethal or lethal water temperatures in the North, Central, West, and South Delta. Smelt were able to survive only in the western portion of the LSZ of eastern Suisun Bay and extreme western Delta (Figure 22) where water temperatures remained sub-lethal at 22-24C.

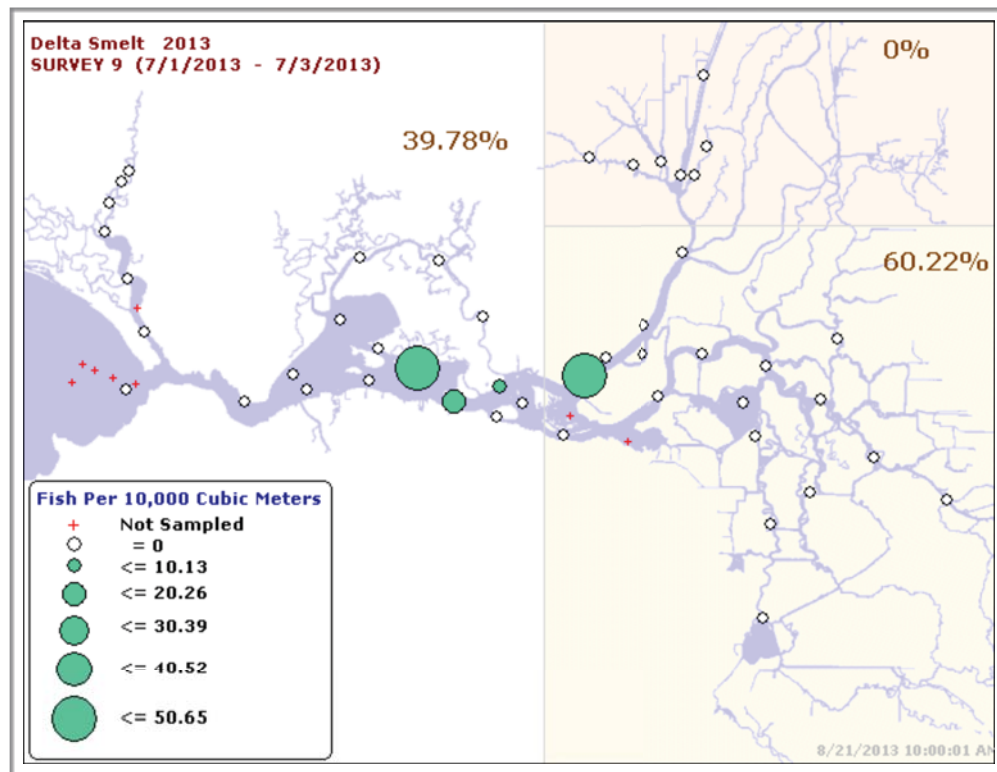


Figure 22. Early July 20-mm Smelt Survey results. (Source: <http://www.dfg.ca.gov/delta/data/20mm/>)

This ninth and last of the Department of Fish and Wildlife's 2013 20-mm Survey shows that the majority of smelt were in the Delta at the beginning of July. The Summer Towntnet Survey that began in mid June (unpublished CDFW data) has provided a Delta smelt abundance index based upon its first two surveys (weeks of June 10 and 24). The preliminary 2013 index is 0.7, down from last year's 0.9. The results from the remaining Summer Towntnet Survey and the Fall Mid-

Water Trawl Survey will help reveal the full extent to which Delta smelt were harmed by Project operations this summer. Based upon my decades of experience, I suspect that summer 2013 parallels the conditions during the Pelagic Organism Decline (POD) and record low smelt indices early in the last decade.

Solution

The problem remains that neither the D-1641 Water Quality Objectives for the Delta or the OCAP Biological Opinions have protections for Delta smelt after June. The demise of VAMP's limit on exports in the late spring has exacerbated the problem. The D-1641 dry and critical year standards for outflow are simply too low to protect delta smelt and their important habitats. Even with higher outflows, excessive exports remain a problem. The inflows necessary to sustain high exports reduce reservoir storage and cold-water pools, and bring warmer, low-productive reservoir water into the Delta and LSZ. Cooler, more productive, more turbid water, critical to delta smelt growth and survival is first exported from the Delta and then replaced with warm, low turbidity, low productivity reservoir water. Higher summer outflow and reduced exports (and a minimum of inflow necessary to sustain reduced exports) in drier years are fundamentally necessary for delta smelt recovery. A minimum of inflow and exports will increase residence time and productivity, allow higher productivity waters and smelt to remain in the Delta, and allow Delta waters to remain cooler to sustain smelt.

EXHIBIT 3

Review of Summer 2014 Water Transfers Federal Environmental Assessment

Introduction

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency related to the drought. The Proclamation finds that California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall since January, with very limited snowpack in the Sierra Nevada mountains, decreased water levels in California's reservoirs, and reduced flows in the state's rivers. The Proclamation orders that the provisions of the January 17, 2014 Proclamation remain in full force and also adds several new provisions including: the State Water Board and the Department of Water Resources (DWR) are to expedite requests to move water to areas of need.

Federal water contractors in the Sacramento Valley recently were allocated by the US Bureau of Reclamation (Reclamation) up to 75% of their contract amounts of Central Valley Project (CVP) water this summer, while more "junior" water contractors in the San Joaquin Valley received 0%. The San Joaquin contractors would like to purchase some of the allocated water from the north and transfer it for their use through the federal Central Valley Project export facilities in the Delta to the south. Reclamation, which co-operates the Delta export facilities with the State Water Project, must notice the transfer under the National Environmental Policy Act (NEPA) as a federal action for public review and comment. Reclamation has provided public notice of the proposed transfers under a Finding of No Significant Impact (FONSI) with a supporting Environmental Assessment (EA).

This document summarizes the major findings of my review of Reclamation's findings specifically as they apply to the effects of the proposed water transfers on Longfin and Delta smelt, two endangered species that reside in the Bay-Delta estuary and who may be adversely affected by the proposed water transfers. The Delta Smelt are only found in the Delta and are at their lowest population level ever recorded. Both smelt populations decline significantly in droughts. Water transfers are a contributing stressor in droughts.

The proposed water transfers would be carried out under applicable Delta protections for water quality and fish (and other beneficial users). The main protections are from the Delta Water Quality Control Plan (D-1641 Water Quality Standards), two federal Endangered Species Act biological opinions (one from the National Marine Fisheries Service for salmon, steelhead, and sturgeon; the other from the US Fish and Wildlife Service for Delta Smelt), and a State Endangered Species Act Incidental Take Permit (ITP) for state listed salmon, steelhead, and smelt (Longfin and Delta smelt). The State Water Board modifies the Standards regularly with Orders upon receiving requests from the California Department of Water Resources and concurrence from others. Water transfers are generally exempt under these Orders.

53

54

The Delta water quality standards have been modified under recent State Water Board orders to save water supplies in reservoirs that have been depleted during the three years of drought. Delta outflow and salinity standards (required minimal limits) have been relaxed for the summer under recent orders to reduce the release of reservoir water to the Delta normally prescribed to block salt water intrusion from San Francisco Bay. The state and federal resource agencies responsible for protecting the listed endangered species in the Delta have generally concurred with provisions of the orders.

54

Water transfers come in various forms and may conform to the existing water quality standards and biological opinions, or have their own special rules from specific Orders or changes to biological opinions after consultations with agencies. The federal Central Valley Project (Shasta, Folsom, and New Melones reservoirs) and State Water Project (Oroville Reservoir) are the major sources of water transfer water. However, generally water transfers involve the sale of water from one entity to another. A good example is the sale of Yuba County Water Agency water from Bullards Bar Reservoir on the North Fork of the Yuba River to state and federal water contractors. The purchased water (often 50,000 acre-feet per year) is released over the summer down the Yuba River into the Delta for export "on top of" normal state and federal Delta exports under a special set of rules. While normal summer exports are limited to 65% of the freshwater inflow to the Delta, water transfer water released from reservoirs to the Delta may be exported at 100% of the added contribution to Delta inflow. Therein lies the basic problem with water transfers through the Delta.

55

In the Yuba summer transfer example there is a whole array of actions and potential problems or ramifications. First, water is released from the reservoir for an unintended purpose (not Yuba County irrigation). Storage is lowered. Recreation and future supplies are affected. The Yuba River (and Feather River) is subjected to abnormal flow patterns (good and bad). Extra electricity is generated above that normally allowed under the Yuba Accord. Second, the water enters at the north end of the Delta's tidal bowl and is exported on paper at the south end via the South Delta export pumps. What gets exported is really not Yuba water, but a mix of tidewater habitat with endangered species and their foodweb organisms.

Another good example of a water transfer through the Delta is the spring 30-day flow pulse from San Joaquin Valley reservoirs (100-150 thousand acre-feet) under the guise of a "fish flow". Normal rules call for export of only 35% of spring Delta inflow, but this transfer is allowed to export 100% or 1:1. This transfer occurs from mid-April to mid-May with several thousand cfs of water entering the South Delta from the San Joaquin River at Vernalis. The sources of the pulse flow are the Sierra reservoirs on the Stanislaus, Merced, and Tuolumne Rivers.

56

The problem with transfers is that each is usually small and flies under the radar, but together can have a large cumulative effect that generally is not considered and often ignored. Therefore assessments of transfer effects need consider the individual (local) effects, but more importantly the cumulative effects of the entire array of transfers.

The water transfers proposed by Reclamation are just a subset of the overall transfers proposed this summer. Reclamation's Environmental Assessment covers only proposed federal contractor transfers, and thus does not present sufficient information to assess the true nature and full extent of impacts of all the potential transfers that may occur this summer. Therefore this review is limited only to the specific effects of the proposed federal transfers, with some insights as to the overall effect of all the transfers.

57

The following review lays out the basis for my assessment in a way that is hopefully understandable to those not as familiar as me with the complexities of the Delta. The workings of the state and federal water project, the role of water quality standards, and their effects on Delta fish biology are generally highly contentious.

I provide a summary of my qualifications up front in the report to show my experience with the subject. I am very familiar with the workings and problems of the state's Delta water quality standards and the biological opinions for endangered Central Valley and Delta fishes. I understand how the water quality standards work and how the recent State Water Board orders affect Delta operations and fish. I attempt to explain how the Delta water quality standards work and how Delta operations and the resulting hydrology affect the Longfin and Delta smelt populations. I address how moving transfer water through the Delta for export under relaxed water quality standards places great risk to the smelt and the habitats they and many other species depend upon. I explain the key issues as I see and understand them, and include the data and analyses that support my reasoning. I have tried to minimize the vast amount of technical jargon that plague Delta issues.

I start with background on my qualifications and experience, and then summarize the water transfer requests, how they would work, and my assessment and conclusions. My focus on five key questions:

1. **Will water transfers increase the exposure of Longfin or Delta smelt to South Delta Exports?**
2. **Will water transfers reduce the growth or survival potential of smelt populations?**
3. **Will water transfers increase the risk of extinction of the smelt species?**
4. **Would water transfers under D-1641 standards pose a greater risk to smelt than would otherwise occur without water transfers?**
5. **Would water transfers under D-1641 standards for the transfer period as relaxed per the May 2, State Board Order pose a significant risk to smelt as compared to transfers under normal D-1641 standards for the transfer period?**

Experience and Qualifications

I am a specialist in assessing environmental effects on fish and their aquatic habitats. I have over 40 years of experience at this along with degrees in fisheries, biology, and biostatistics. My professional career has focused on estuarine fisheries ecology with experience on East Coast and West Coast estuaries including 25 years since 1977 relating to the Sacramento-San Joaquin Delta Estuary. From 1977-1980 I was project director of Bay-Delta ecological studies for PG&E's Bay-Delta power plants effects studies. From 1980-82, I was a consultant to the State Water Contractors, the National Marine Fisheries Service, and State Water Resources Control Board (State Board) determining the effectiveness of the 1978 Bay-Delta Water Quality Standards in protecting the Bay-Delta ecosystem and striped bass population. From 1986-1987 I was a consultant to the State Water Contractors and Bureau of Reclamation during the State Board hearings on water quality standards. From 1994-1995, I was a consultant to the State Water Contractors and the California Urban Water Agencies, working on the 1995 Bay-Delta Water Quality Standards and how the new standards would affect the Bay-Delta ecosystem and its fish populations. From 1995-2003 I was a consultant to the CALFED Bay-Delta Program where I worked on various teams assessing the effects of alternative Delta operations and water supply infrastructure. From 2002 to 2010 I was involved in activities related to the Striped Bass Stamp Program, Salmon Hatchery Program, and Delta fish surveys funded by the US Fish and Wildlife Service to assess the effects on Delta fish and habitats. In the past decade I have

worked closely with the Fishery Foundation of California, the California Striped Bass Association, and the California Sport Fishing Protection Alliance on Delta science related issues including water quality standards and the Bay Delta Conservation Plan (BDGP). Most recently I have reviewed the effects of the various drought-related orders of the State Water Board and the potential effects of the State's 2014 Drought Plan on the Bay-Delta Estuary's fish populations and habitats.

Water Transfer Proposal

Reclamation proposes to transfer up to 175,000 acre-feet of Central Valley Project water allocated to Sacramento Valley federal water contractors to San Joaquin Valley federal water contractors. The water would be released from Shasta Reservoir (at a rate of 205-420 cfs depending on the willingness of sellers) this summer and routed down the Sacramento River into the Delta where it will be exported at the federal South Delta export facilities to the San Joaquin Valley via the federal Delta Mendota Canal. The proposal states that the transfer through the Delta would occur under existing water quality standards and biological opinions requirements, as amended through agency consultations (Figure 1).

- Transfer water will be conveyed through the SWP's Harvey O. Banks Pumping Plant (Banks PP), under permits for Joint Point of Diversion, and the CVP's C.W. "Bill" Jones Pumping Plant (Jones PP) only during the transfer window that is acceptable to USFWS and NMFS, typically July through September, or as amended through consultation with USFWS and NMFS.
- If conditions remain critically dry, water diverted from the Delta would be in compliance with existing outflow criteria and pumping restrictions imposed by the State Water Resources Control Board (SWRCB) through Reclamation and DWR's Temporary Urgency Change Petition approved by the SWRCB on January 31, 2014, as may be amended.

DWR and Reclamation would determine availability of Delta pumping capacity throughout the transfer period.

Figure 1. Transfer water conveyance (from Reclamation's FONSI letter)

Restrictions on Water Transfers

Under State Water Board orders, export restrictions in the Delta water quality standards would not apply to water transfers. Salinity standards would apply; however, these standards have been relaxed to accommodate water transfers. A small portion of the transfer water amount entering the Delta may not be exported in order to maintain specific salinity standards. Biological opinion export restrictions only apply through June. Thus to avoid these restrictions, the proposal only applies for the summer (July-September). In summer, exports are restricted to 65% of freshwater inflow, but this limitation does not apply to water transfers between state or federal water contractors. The State Water Board orders restrict exports from the Delta to health and safety needs of no more than 1,500 cfs, with the exception of transfers. *"Any exports greater than 1,500 cfs shall be limited to natural or abandoned flows, or transfers. Additionally, DWR and Reclamation, in cooperation with the fishery agencies, will*

consider transfer requests on an individual basis. *The Interagency 2014 Drought Transfers Group will help facilitate the approval of proposed transfers.*" (Source: <http://ca.gov/drought/pdf/2014-Operations-Plan.pdf>; page 10.)

58

Summary of Reclamation Assessment

Reclamation has issued a Finding of No Significant Impact (FONSI) based on the following reasoning:

In their FONSI cover letter, the Bureau stated that their Environmental Assessment-Incidental Take Statement (EA/IS) analyses indicated after a "*thorough and systematic evaluation*" that "*no potentially significant environmental impact may occur as a result of the Proposed Action, as mitigated.*" Their specific statement on effects on fish resources follows in Figure 2. Their assessment as to potential cumulative effects of these and other transfers follows in Figure 3.

FISHERY RESOURCES

Water transfers would slightly increase river flows downstream of the point of diversion relative to the No Action Alternative during the transfer period. Reclamation is consulting frequently with USFWS and NMFS on CVP and SWP operations relative to the BOs and special status fish species in the Delta. Special status fish species would not be affected by the Proposed Action beyond those impacts considered by the BOs and current consultations with NMFS and USFWS.

The Proposed Action would result in increased conveyance through the Delta during the transfer period (July through September, unless it shifts based on feedback from NMFS and USFWS). Special status fish species are generally not in the Delta during the transfer period (July-September) and effects to these fish species from transferring water during this timeframe were considered in the NMFS and USFWS BOs. Transfers would slightly increase inflow into the Delta, but would not change outflow conditions as compared to the No Action Alternative. The incremental effects of transfers on special status fish species in the Delta from water transfers would be less than significant.

Figure 2. Reclamation's effects statements from FONSI letter.

11. Cumulative Impacts: The cumulative impacts analysis considers other potential water transfers that could occur in the 2014 transfer season, including non-CVP water transfers and other existing water transfer and groundwater programs, including the Lower Yuba River Accord. Given the short-term nature of the Proposed Action, Environmental Commitments and minimization measures, impacts to the previously discussed resource categories associated with the Proposed Action will not contribute to a cumulatively significant adverse impact when added to other past, present, and reasonably foreseeable future actions. The Proposed Action would not adversely affect the human environment and therefore would not contribute to any long-term effects on environmental resources. The Proposed Action will not result in cumulative impacts to any of the resources previously described.

Figure 3. Reclamation's cumulative effects statement from FONSI letter

My Review Approach

My assessment is focused on the potential effects of the proposed water transfer on Longfin and Delta populations residing in the Delta during the summer of 2014. Specifically, I have assessed how the added Sacramento River Delta inflow and export of 205-420 cfs from the South Delta this summer would potentially affect the smelt populations. I also address the veracity of the Bureau's impact arguments and conclusions.

Information Used for My Review

In preparing for this review and assessment of the effects of proposed water transfers on the listed smelt and their habitats, I have reviewed the daily patterns of Delta operations in recent drought years including 2014 through mid-May. In addition to the reviewing the water transfer proposals and the associated Reclamation environmental assessment and State Board orders, I have reviewed and used hourly or daily data on hydrology, water quality, Delta pumping plant operations and fish salvage, and smelt distributions in the Delta available via the Internet at various state and federal agency web sites. Most helpful is the review and analyses of the agencies' Smelt Working Group (SWG) that has met and reported weekly on Delta operations and the effect of drought operations on as well as assessments of risk to the smelt populations. The Smelt Working Group weekly reports¹ include data from special real-time smelt surveys not available from other sources, as well as the opinions of its members on relevant subjects.

Review and Analyses

The basis for my review and analyses of effects of the proposed water transfers is a comparison of without-transfer conditions expected this summer with expected with-transfer conditions. Both conditions include recently relaxed water quality standards. The conditions this summer will be somewhat unique because for the first time in nearly 20 years the applicable Delta water

¹ http://www.fws.gov/sfbaydelta/cvp-swp/smelt_working_group.cfm

quality standards have been relaxed because of the present extreme drought². Specifically, (1) the critical year summer standard of 4000 cfs Delta outflow has been reduced to 3000 cfs; (2) the Delta salinity standard³ for the Emmaton site has been moved upstream approximately 2.5 miles to Three Mile Slough; and (3) South Delta exports are limited to 1500 cfs from the normal maximum of 11,400 cfs or 65% of Delta freshwater inflow (whichever is less), not including transfers.

Summer Delta Conditions per D-1641 Standards: Without Transfers:

- Delta Inflow – comprised of abandoned flow and reservoir releases necessary to meet revised standards for Delta outflow and salinity.
- South Delta Exports \leq 1500 cfs
- Delta Outflow \geq 4000 cfs
- Delta Salinity at Emmaton = (\leq 2.78 mmhoes EC or \sim 1.7 ppt salinity)

Summer Delta Conditions per D-1641 Standards: With Transfers:

- Delta Inflow – comprised of abandoned flow and reservoir releases necessary to meet revised standards for Delta outflow and salinity as well as added water transfer inflow (205-420 cfs)
- South Delta Exports \leq 1500 cfs plus additional 205-420 cfs transfer water
- Delta Outflow \geq 4000 cfs
- Delta Salinity at Emmaton = (\leq 2.78 mmhoes EC or \sim 1.7 ppt salinity)

Summer Delta Conditions per D-1641 Standards: As Relaxed by May 2 Order: With Transfers:

- Delta Inflow - abandoned flow and reservoir releases necessary to meet standards for Delta outflow and salinity, as well as added water transfer inflow (205-420 cfs)
- South Delta Exports \leq 1500 cfs plus 205-420 cfs transfer water
- Delta Outflow \geq 3000 cfs
- Delta Salinity at Three Mile Slough = (\leq 2.78 mmhos EC or \sim 1.7 ppt salinity⁴)

Smelt Risk Assessment: Summer Delta Conditions per D-1641 Standards: Without Transfers

² http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/050214_tucp_order.pdf

³ Note: the “Table 2 Western Delta Sacramento River” salinity requirement is 2.78 EC, which is about 1.7 ppt (or psu). Thus, the compliance location for the “Table 2 Western Delta Sacramento River” salinity requirement in Three Mile Slough is a good indicator of the center of the low-salinity zone that defines young Delta Smelt habitat in the Delta in the transfer period.

⁴ This is very close to the expected average location of X2 (2 ppt), which would vary from EC as a function of water temperature. Note: X2 as defined as a depth specific or averaged parameter may move up to six miles or more in a single tidal cycle, and vary significantly on a daily, 14-day, or monthly average with outflow and tidal forces. EC can vary significantly as with X2 but also with depth.

Young Delta smelt being pelagic (open water residing) are at risk to exports from the South Delta under the regular standards and even more so under relaxed standards. Adding higher exports from the water transfers further adds to the risk. Regular without-relaxation conditions occurred as recently as the beginning of May 2014 and are expected to soon revert to the relaxed standard conditions through the summer. Delta smelt young were observed at both the state and federal south Delta export facilities in early May (Smelt Working Group May 12 meeting notes⁵). The process in which young smelt are vulnerable to export is depicted in Figure 4. Early May exports were higher at 2500 cfs than the 1500 cfs of the May 2 State Board Order, because of the San Joaquin River water transfer. Exports of this magnitude, though only about 20% of capacity, draw water south from the central Delta (see my added yellow arrows in Figure 4) to the export facilities (added red circle). Delta outflow in this case was 4000 cfs (the regular standard), slightly higher than that of the 3000 cfs of the relaxed standard. Freshwater inflow in Figure 4 is depicted by my added blue arrows. (Note: freshwater inflow is net inflow and may represent only a small percentage of the actual tidal flows.) Delta smelt collected in the 20-mm Net Survey⁶ are depicted in Figure 4 by green dots. I also added the approximate location of the average 2 ppt salinity level (red line), which is very near the prescribed location of the regular water quality standard. Under the relaxed standards, this standard location (Emmaton) would move upstream to Three Mile Slough (the left most blue arrow). Note the relocation comes about by less freshwater flow coming down the Sacramento River channel at Three Mile Slough resulting in higher average salinity. With less westward transport young Delta smelt would be less inclined to move west to relative safety. With higher exports and more southerly transport, young smelt would be more inclined to move south across the Delta to the export pumps to their demise. Thus Delta smelt are more vulnerable to being drawn toward south Delta exports under the relaxed outflow standard and higher exports allowed under the transfer.

⁵http://www.fws.gov/sfbaydelta/documents/smelt_working_group/swg_notes_05-12-2014.pdf

⁶ <http://www.dfg.ca.gov/delta/data/20mm/>

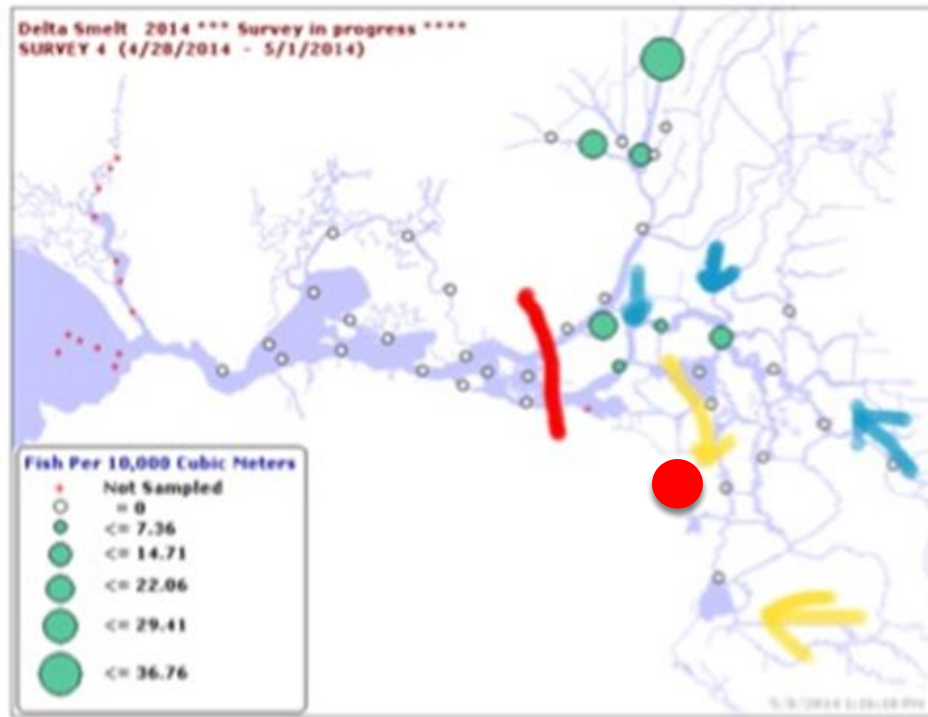


Figure 4. The distribution of Delta smelt young in early May 2014 survey under near-normal conditions (4000 cfs Delta outflow). Blue arrows represent freshwater inflow. Yellow arrows represent reverse flows to south Delta export facilities at red circle. Red line represents the approximate location of 2 ppt salinity.

The young Longfin smelt distribution in the same early May 2014 20-mm Net Survey⁷ depicts a different risk pattern with Longfin concentrated further downstream in the Bay (Figure 5) than Delta smelt (Figure 4). Thus the Longfin were less vulnerable to the south Delta exports under these regular water quality standards (4000 cfs outflow and 2 ppt salinity at Emmatton). However, under relaxed standards with lower outflow (3000 cfs) and 2 ppt salinity at Three Mile Slough, Longfin concentrations would likely be further upstream in the central Delta and more vulnerable to exports. Increasing exports with water transfers would thus increase the risk to Longfin smelt albeit a lesser overall risk than that for Delta smelt.

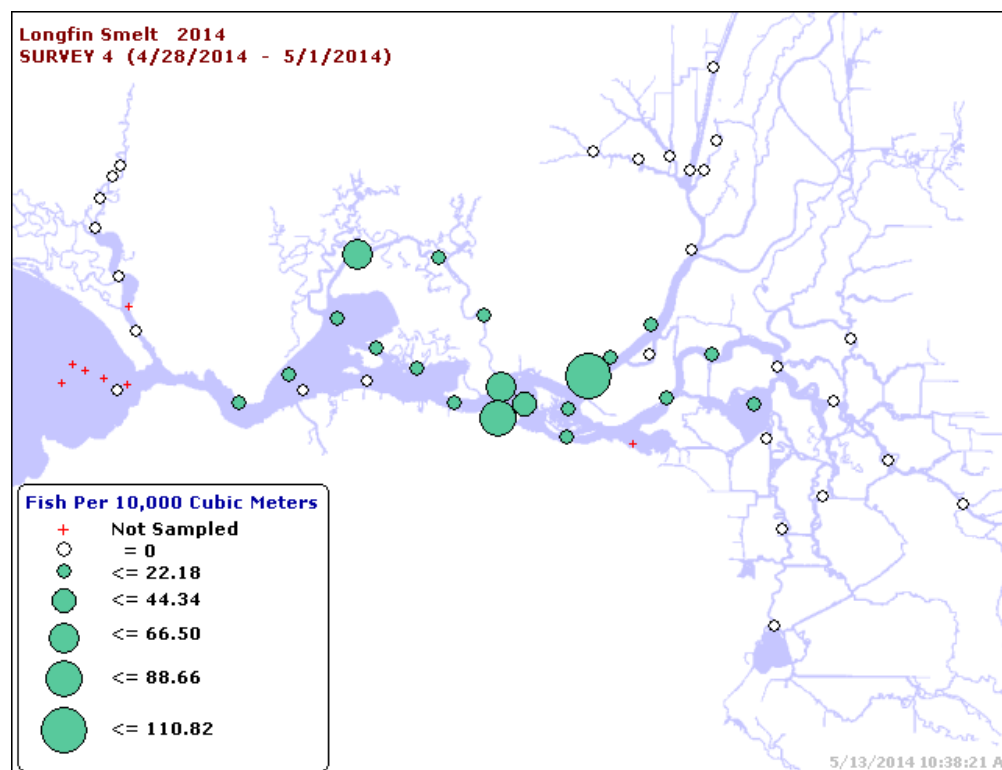


Figure 5. Distribution of Longfin smelt young in early May 2014 survey.

⁷ <http://www.dfg.ca.gov/delta/projects.asp?ProjectID=20mm>

To further characterize the risk to smelt, I also looked at the early summer distribution Delta smelt in recent drought years 2009 (Figure 6) and 2013 (Figure 7). In each case outflows were slightly higher than the standards and Delta smelt were concentrated in the west and north Delta. With a change to the relaxed standards, Delta smelt in these two situations would likely shift with the 2 ppt salinity line (solid red line) upstream to a new location (dotted red line) where Delta smelt would be at much higher risk to south Delta exports. Indeed, Delta smelt were observed in south Delta export fish-salvage collections⁸ in all three periods with the normal standards, low-outflow, low-export conditions (Figures 8, 9, and 10).

61

Smelt Risk Assessment: Summer Delta Conditions per D-1641 Standards: With Transfers

While Reclamation has not requested water transfers to occur under normal (non-relaxed) standards, under the Orders water transfers could be conducted in this manner. Such a situation may arise if higher abandoned flows from rainstorms increase reservoir storage or Delta inflows and thus provide for (allow) exports higher than 1500 cfs. In which case, water transfers would occur as they have in past years. With the addition of transfers, the risks to smelt would increase as exports would increase under the same outflow. Delta outflow requirements would be 4000 cfs or higher, plus the added exports would increase risk as they occur under the transfer rule of 100% of inflow compared to the normal export rule of 65% exports/inflows. It is my opinion that the added risk to Delta smelt from transfers is lower the higher the total exports, because the relative proportion of the transfers declines with increasing exports. Thus, the relative effect of transfers is higher under low exports because the transfers represent a higher relative proportion of the inflows and exports. The risk can be amplified if the federal contractor transfers represent only a portion of the potential transfers being proposed this summer.

62

Smelt Risk Assessment: Summer Delta Conditions per D-1641 Standards: As Relaxed by May 2 Order: With Transfers

To assess the potential risk to Delta smelt of adding summer transfers under relaxed standards I looked at the distribution of Delta smelt in these same surveys from the beginning of summer in recent drought years 2009 and 2013 to ascertain the potential risk to the Delta smelt from increased exports from transfers. It is my opinion that the risk to Delta smelt from transfers is greater under the new relaxed standards. As stated above, the relaxation of outflow from 4000 cfs to 3000 cfs moves the concentrations of Delta and Longfin smelt further to the east where they are more likely to be drawn to the south Delta exports. Adding 15-25% to Delta exports from the water transfers under these low-outflow, low-export conditions adds significantly to the risk. Smelt would be more likely to enter the north-to-south, cross-Delta flow-transport stream to the south Delta exports. It is for this reason that the summer export standard to protect all beneficial uses is 65% of Delta inflows. Allowing water transfers to occur at or very near 100% ignores this basic premise for protecting the beneficial uses including smelt, other fish, and their habitat-foodweb resources. If the federal contractor transfers represent only a portion of the

63

⁸ Note: each of the federal and state pumping plants has fish collection facilities that “salvage” fish prior to entering pump facilities. These fish are collected and trucked to the west Delta. Only a very small percentage of smelt survive the salvage process. Furthermore, many of the smelt that move south in the net flows of the export pumps across the Delta are believed to be lost prior to reaching the export salvage facilities.

potential transfers being proposed this summer, then the risk to Longfin and Delta smelt from higher transfer amounts would be even greater.

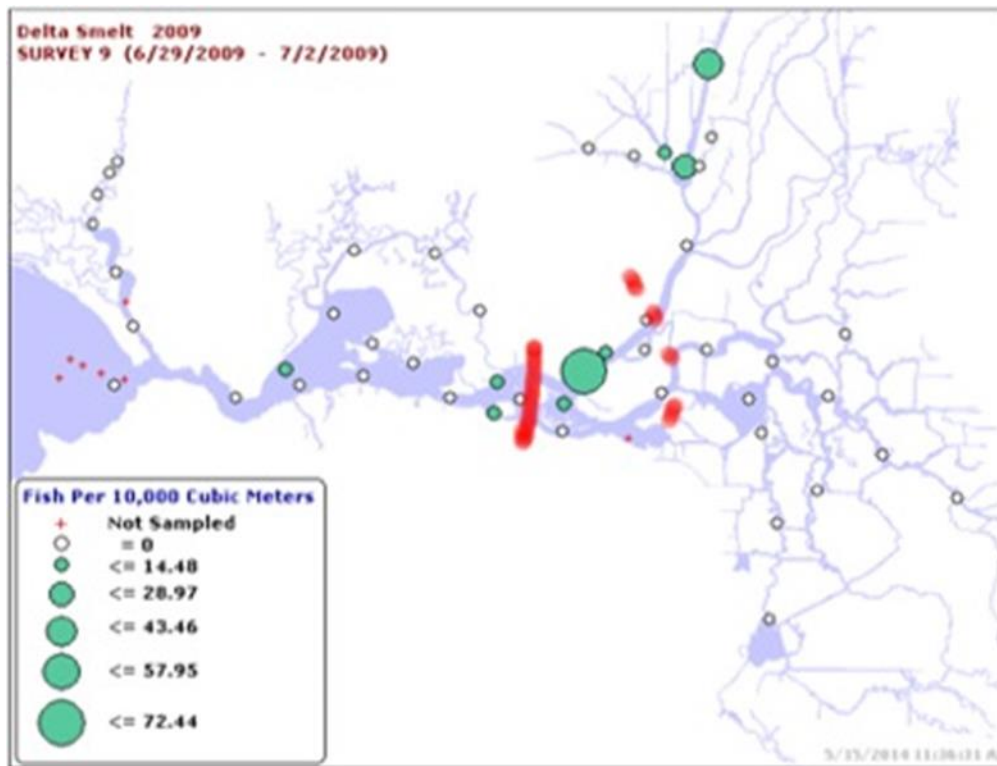


Figure 6. Distribution of Delta smelt from early summer survey in 2009. Red line depicts the approximate location of 2 ppt salinity during the survey. Dotted red line depicts the likely location of 2 ppt salinity with only 3000 cfs outflow under the relaxed standards of the 2014 Orders.

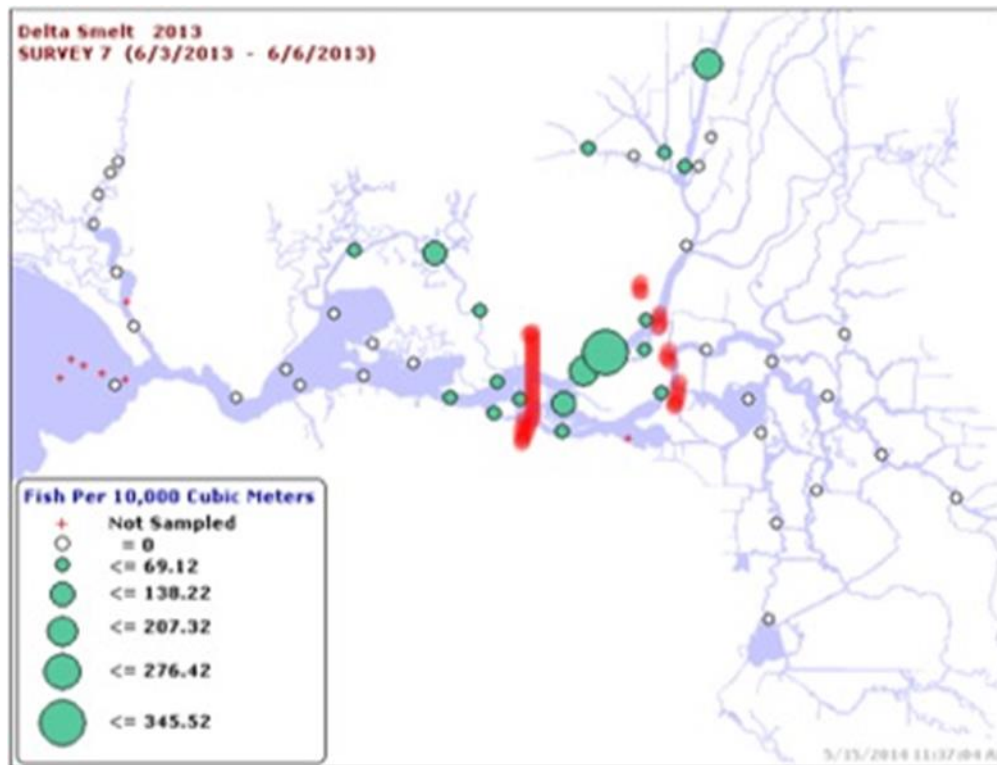


Figure 7. Distribution of Delta smelt from early summer survey in 2013. Red line depicts the approximate location of 2 ppt salinity during the survey. The dotted red line depicts the likely location of 2 ppt salinity with only 3000 cfs outflow of the relaxed standards under the 2014 Order.

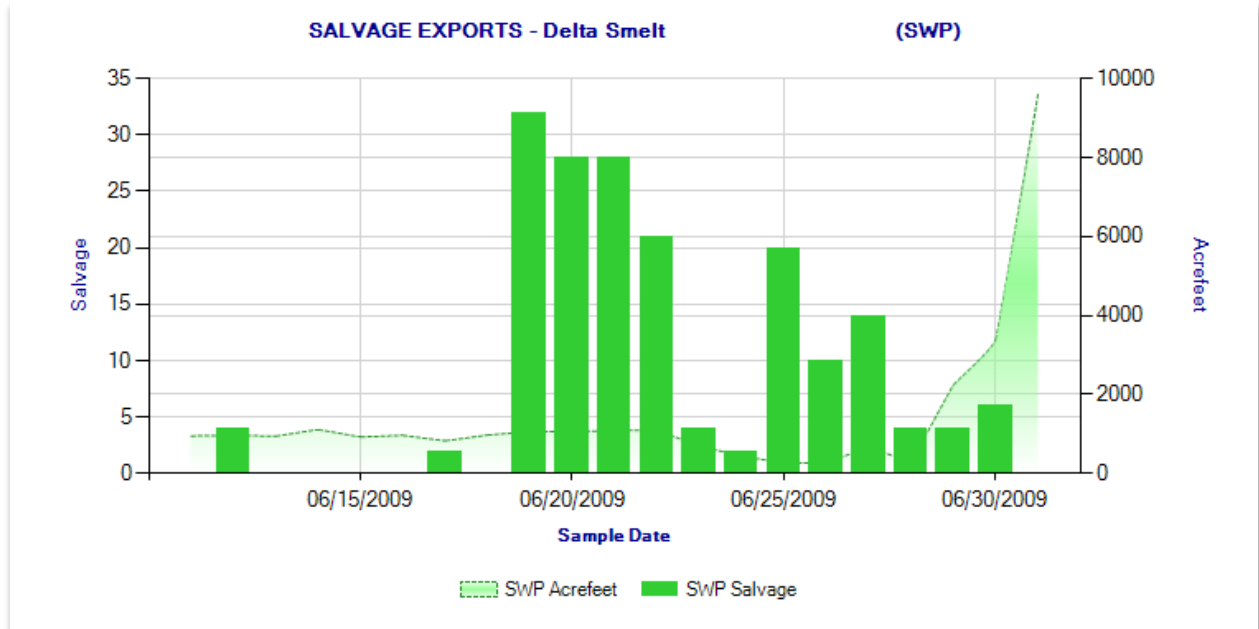


Figure 8. Salvage of Delta smelt at the Clifton Court Forebay fish collection facilities in the south Delta in June 2009. The export rate was less than 1000 cfs during this period of low Delta outflow.

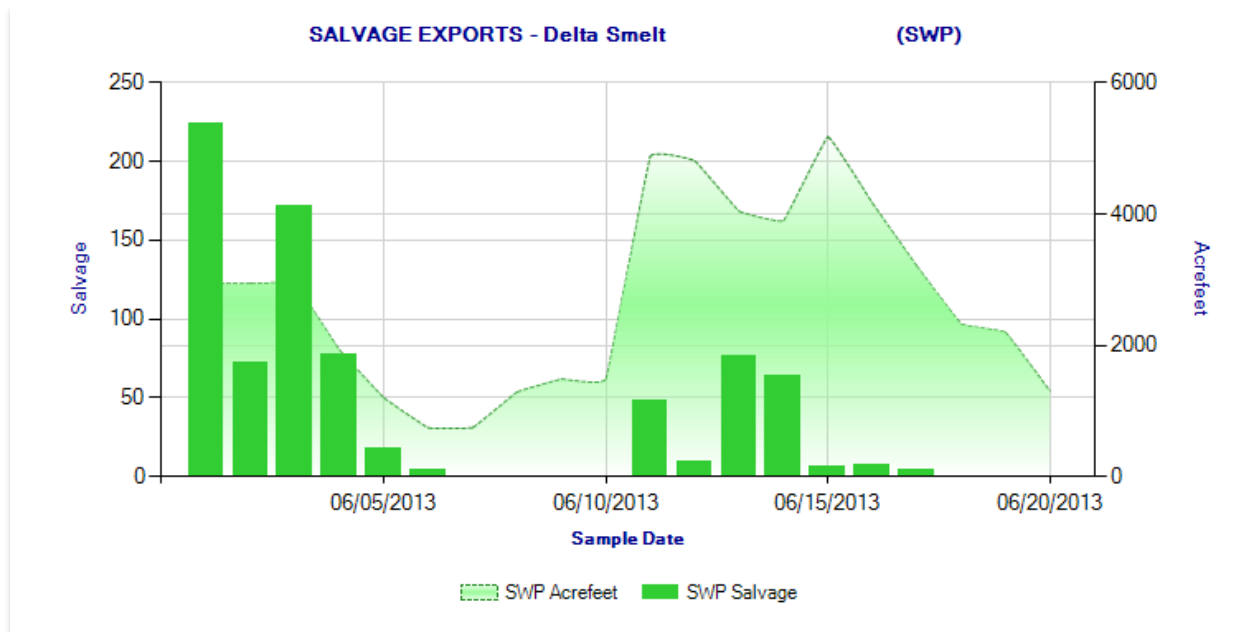


Figure 9. Salvage of Delta smelt at Clifton Court Forebay fish collection facilities in the south Delta in June 2013. The export rate was 500-2500 cfs during this period of low Delta outflow.

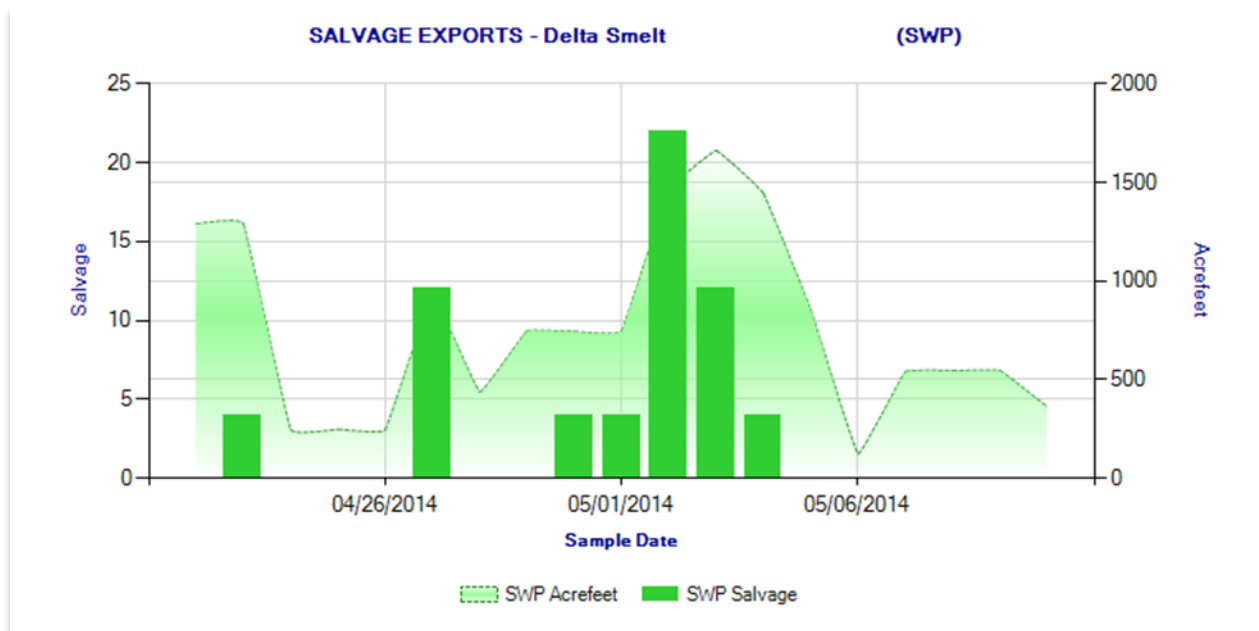


Figure 10. Salvage of Delta smelt at Clifton Court Forebay fish collection facilities in the south Delta in late April and early May 2014. Export rate was less than 3000 cfs during this period of low Delta outflow.

My Answers for Key Questions

In my review and analyses I kept in mind the key questions I was going to address on the potential effects of the Proposed Action:

1. Will water transfers increase the exposure of Longfin or Delta smelt to South Delta Exports?
2. Will water transfers reduce the growth or survival potential of smelt populations?
3. Will water transfers increase the risk of extinction of the smelt species?
4. Would water transfers under D-1641 standards pose a greater risk to smelt than would otherwise occur without water transfers?
5. Would water transfers under D-1641 standards for the transfer period as relaxed per the May 2, State Board Order pose a significant risk to smelt as compared to transfers under normal D-1641 standards for the transfer period?

Opinion on Question 1: Water transfers this summer under normal or relaxed water quality standards would significantly increase the risk to smelt residing in the Delta to being drawn into the south Delta and exported (lost) at the federal and state export facilities.

64

Opinion on Question 2: Water transfers will increase the export of low salinity pelagic habitat; and degrade remaining habitat through increase water temperatures, reduced foodweb productivity, and lower turbidity in smelt nursery areas (from higher river inflows of water transfers); which would reduce growth and survival of Longfin and Delta smelt.

65

Opinion on Question 3: The Delta smelt and Longfin smelt populations are at or near record low index levels. Any further stressors such as higher exports from water transfers on the population would significantly increase the already high risk of extinction. The Bay-Delta population of Longfin smelt risk of extinction though less than that of Delta smelt is also higher because the relaxed standards will shift their population upstream from the relative safety of Suisun Bay into the West and Central Delta where the effects of added transfers will be significantly higher.

66

Opinion on Question 4: Water transfers under normal D-1641 standards and under normal dry year conditions with low Delta inflows, low Delta outflows, and low exports pose a significant risk to smelt because transfers have a higher proportional effect on the conditions. Under 1:1 criteria, transfers increase inflow and exports proportionally over outflow, which increases the risk to smelt.

67

Opinion on Question 5: Water transfers in dry year conditions under relaxed D-1641 standards water quality standards would significantly increase the risk to smelt over that under the normal water standards. With even less outflow and a LSZ being further upstream and well into the cross-Delta flow of export water, transfers pose a much greater risk to the smelt

68

Conclusions

(1) The EA for the 2014 North to South Water Transfers does not present sufficient information to assess the true nature and extent of impacts that water transfers may have on Longfin and

69

Delta smelt. Specifically, the EA does not address the added risk from the changes to the water quality standards requested by Reclamation and approved by the State Water Board.

69

(2) With or without the relaxation of the water quality standards, the transfers are likely to have a significant adverse effect on Longfin and Delta smelt through increased direct loss of young smelt to south Delta exports and indirect loss from degradation of smelt critical habitat by higher water temperatures, lower turbidity, and reduced foodweb productivity.

70

(3) State Board Orders and the April 18 Drought Plan call for changes in Delta water quality standards (D-1641) that increase already high risks to the Bay-Delta ecosystem including Longfin and Delta smelt. Adding water transfers under relaxed standards will add significantly to already high risks.

(3.1) Relaxed outflow standards in summer (reduced outflow from 4000 cfs to 3000 cfs) will reduce the amount of low-salinity habitat in the Delta critical to Longfin and Delta smelt (two listed species that reside primarily in the low salinity zone in late spring and summer), and reduce migration cues for smelt that must pass through the Delta to their fall-winter nursery areas in upper San Francisco Bay. In addition to the decline in area of the low salinity zone, the low salinity zone will be located further upstream (to the east) in the Central and Northern Delta which will result in poor water quality (high water temperatures that may reach lethal levels for smelt, and higher concentration of chemicals including ammonia and pesticides potentially lethal to smelt and their food organisms). Further deterioration of the low salinity zone would occur from higher water temperatures, lower turbidity, and poor Delta foodweb production, as well as the potential upstream expansion of invasive non-native Bay clams. Lower turbidity will reduce smelt growth and survival, and lead to increased predation by non-native fish species on native fish species including smelt. In July there would be no protection for smelt and other pelagic Bay-Delta fish species and their plankton food supply from planned Delta exports that include water transfers. The overall effects will result in potentially dramatic changes to the Bay-Delta endangered fish populations that will last for decades to come.

71

(3.2) The proposed change in the lower Sacramento agricultural water quality standard from Emmaton to Three Mile Slough (necessary under the relaxed lower Delta outflow) will raise Delta salinities and allow further reductions in Delta outflows to the detriment of smelt, salmon, and steelhead. Salinity at Emmaton and Rio Vista in the lower Sacramento River will more than double (EC will go from 2 to 5 millimhos at EMM). Salinity in water exported from the south Delta including transfer water will also be higher with relaxed standards.

(4) Only federal Central Valley Project water transfers were included in the Environmental Assessment. Significant other transfers are possible this summer, thus no adequate cumulative effects assessment was conducted by Reclamation.

72

Veracity of Reclamation FONSI Conclusions

- *“Special status species would not be affected by the Proposed Action beyond those impacts considered by the BOs and current consultations with NMFS and USFWS.”* Neither biological opinion prescribes protection for covered species during the summer. However,

73

both opinions recognize existing water quality standards (mainly 65% export/inflow and Delta salinity standards) as valid protections. (e.g., USFWS BO, pages 29, 128)

- *“Special status fish species are generally not in the Delta during the transfer period (July-September).”* Longfin and Delta smelt both will reside in the Delta under the relaxed water quality standards as they do in most drought years. Nearly the entire Delta smelt population will reside within the Delta this summer with or without the approved changes to the water quality standards. 73 74
- *“Effects to these fish species from transferring water during this timeframe were considered in the NMFS and USFWS BOs.”* While water transfers up to 600,000 acre-feet were considered in the BOs, such water transfers were assumed to occur under existing water quality standards, not under the specific relaxed standards of: 3000 cfs outflow; and ag-salinity standard moved 2.5 miles upstream from Emmaton to Three Mile Slough. 75
- *“Transfers would slightly increase inflow into the Delta, but would not change outflow conditions compared to the No-Action Alternative.”* Delta outflow would be controlled by new relaxed standard of 3000 cfs. Delta inflows from the Sacramento River would increase when Sacramento Valley contractors do not divert their allocated water and instead allow it to pass through to the Delta for export. 76
- *“The incremental effects of transfers on special status fish species in the Delta from water transfers would be less than significant.”* The incremental effect of transfers will be significant, especially under the conditions expected with relaxed standards. 77
- *“The Proposed Action will not result in cumulative impacts to any resources previously described.”* The cumulative effect of all transfers would likely have serious consequences to the smelt populations incrementally above that of the relaxed standards. The Proposed Action being one of the potentially larger transfers would have one of the greatest incremental effects. 78

EXHIBIT 4

Thomas Cannon

5161 Oak Shade Way,
Fair Oaks , CA 95628
916-952-6576
tccannon@comcast.net

June 9, 2014

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105

Dear Tom,

At your request, I have reviewed Delta outflows records maintained by the Department of Water Resources to assess whether the outflow measures known as the Net Delta Outflow Index (NDOI) and Net Delta Outflow (NDO) are comparable. My review indicates that in low flow conditions such as July of 2013 and May of 2014, NDOI grossly overestimates actual Delta outflow (see attached charts.)

The comparison is similar to one provided by DWR's for NDOI and NDO for the year 2013 at:

http://www.water.ca.gov/dayflow/docs/2013_Comments.pdf .

In July of 2013, average NDOI was 5,340 cfs, while average NDO was 1,169 cfs. In May of 2014, average NDOI was 3805 cfs, while average NDO was - 45 cfs.

Sincerely yours

A handwritten signature in black ink, appearing to read "Thomas Cannon", with a stylized, cursive script.

Thomas Cannon

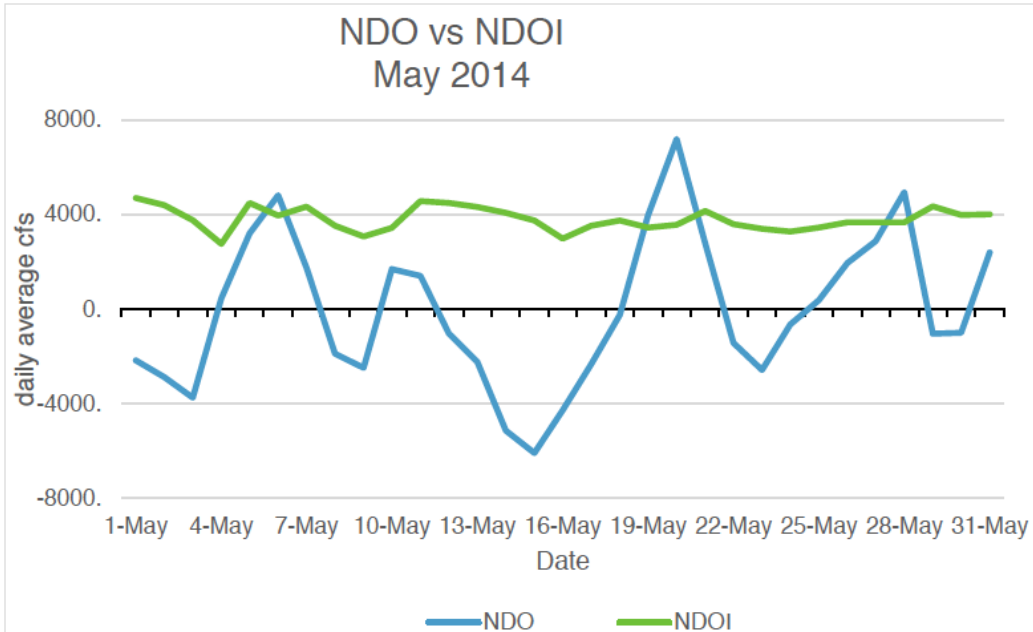
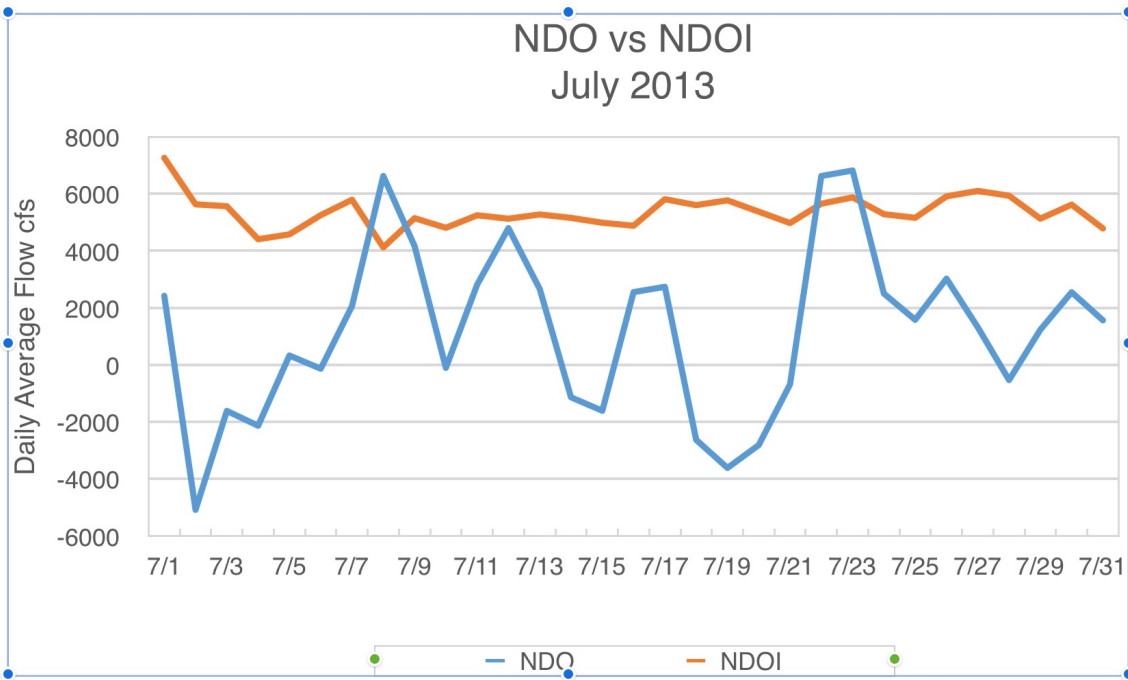


EXHIBIT 5



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO:

MP-410
ENV-6.00

JUN 06 2014

Thomas N. Lippe
201 Mission Street
San Francisco, CA 94105

Subject: 2014 San Luis & Delta-Mendota Water Authority Water Transfers - NEPA

Dear Mr. Lippe:

Your letter dated May 30, 2014 addressed to Brad Hubbard of my staff was forwarded to me. The Bureau of Reclamation (Reclamation) has reviewed this letter and the Exhibits provided, including Tom Cannon's *Review of Summer 2014 Water Transfers Federal Environmental Assessment Report*. Your letter and Mr. Cannon's report both focus specifically on a claim that the proposed 2014 San Luis & Delta Mendota Water Authority Water Transfers could have significant effects on the Federally listed delta smelt.

Our office solicited the review of Mr. Cannon's report by biologists Ms. Frances Brewster with Santa Clara Valley Water District and Dr. Erwin Van Nieuwenhuyse with Reclamation's Bay Delta Office. The responses we received are provided below.

Ms. Frances Brewster's assessment:

Their arguments make no sense to me.

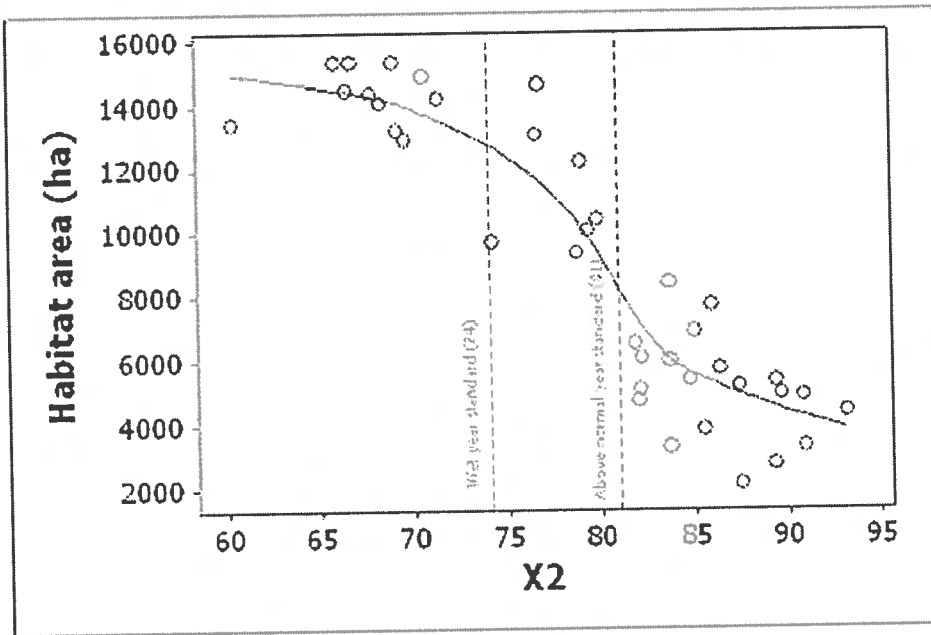
1. They claim there will be higher mortality due to higher temperatures at 3-mile slough than at Emmaton. That claim is not supported by the data. I compared temps at Emmaton with those at Rio Vista for 7/1/2013 through 10/2/2013 (the transfer window). Rio Vista is considerably further upstream than 3-mile slough, but the 3-mile slough station doesn't have a temp sensor. The average difference in temperature is 0.5 degrees F (n=2173 hourly measurements). That difference in temperature is insignificant. (see attached file)

2. They claim there will be increased entrainment of young-of-the-year due to higher reverse flows. The BiOps have no OMR requirements during the transfer window and in a typical year OMRs can be upwards of -8,000 cfs (easy to pull some real data to support actual OMR during that timeframe). Will the transfers even come remotely close to creating that level of negative OMR (model data ought to be available to support that). There is no BiOp OMR requirements during the transfer window timeframe because entrainment risk is so low based on historic data (the BiOp should provide support for that).

3. Their final claim makes the least sense. They claim that transfer flows will displace plankton rich, higher turbidity water with plankton poor, low turbidity water. How is what is being proposed any different from a normal water year when the projects make reservoir releases for export and to augment outflow?

4. Finally, assuming the amount of LSZ habitat makes a difference, according to FWS the available habitat area (as defined by salinity only) when X2 is at Emmaton versus at 3-Mile Slough is essentially equal. Both areas are within the confined Sacramento River channel around X2=95km (see figure below from BiOp at 374).

Figure B-17. Relationship between X2 and habitat area for delta smelt during fall, with standard shown for wet and above normal years.



Dr. Erwin Van Nieuwenhuyse's assessment:

I read Tom Cannon's report and Frances Brewster's comments and agree with Frances' assessment. I don't think that Tom's concerns about increased entrainment are warranted given how low OMR flows are expected to be and his concerns about increased water temperature and reduced turbidity and foodweb productivity are also off the mark. As Frances points out, the area of the Low Salinity Zone (LSZ) will not change appreciably and the temperature difference between Emmaton and Rio Vista is negligible. Under these low flow conditions, turbidity in the LSZ is mostly a function of wind-induced sediment resuspension rather than flow. Similarly, I would not expect the proposed water transfers to have any discernible effect on the LSZ foodweb. Most of the smelt population now resides in the Sacramento Deepwater ship channel upstream of Cache Slough. The ship channel offers relatively high food supplies for smelt and is thermally stratified during July-Oct. Our data indicate that temperature in the lower half of the water column (bottom six meters) remains below 23 C during summer-fall. The ship channel is thus a temperature refuge for over-summering fish. By contrast, unless management actions are taken to stimulate a fall phytoplankton bloom in the lower Sacramento River, the LSZ during the water transfer period is likely to remain relatively food-poor with water temperatures at or near the 25 C threshold. I do not think that the proposed transfer would increase the likelihood of delta smelt extinction.

A copy of the spreadsheet file Ms. Brewster provided is enclosed for your reference. Based on these assessments, Reclamation has determined the impacts of the information provided were already covered in the existing EA, so no changes are warranted. Therefore, Reclamation will not be supplementing the Environmental Assessment or preparing an EIS. Please contact Mr. Brad Hubbard, Natural Resources Specialist, at 916-978-5204 or bhubbard@usbr.gov if you have any questions about our reply.

Sincerely,



Richard J. Woodley
Regional Resources Manager

Enclosure

cc: Ms. Frances Mizuno
Assistant Executive Director
San Luis & Delta Mendota Water Authority
P.O. BOX 2157
Los Banos, CA. 93635



Butte Environmental Council

Educating and advocating for the land, air, and water in Northern California since 1975



December 1, 2014

Brad Hubbard (USBR)
Frances Mizuno (SLDMWA)

Subject: Comments, Long-Term Water Transfers (LTWT) Environmental Impact Statement/Environmental Impact Report (EIS/R), September 2014

Butte Environmental Council (BEC) and the undersigned groups and individuals submit the following comments concerning Long-Term Water Transfers. The comments focus on the legal issues surrounding groundwater substitution water transfers and the technical deficiencies found within Section 3.3 and Appendix D of the EIS/R. Concerned citizens of the northern Sacramento Valley recognize that it is long past the time needed to realize the limitations and variability of our natural water supply. We must learn to live within the confines of that system and stop the exploitation of groundwater and strive to improve protections of this critical, fail-safe source of life.

BEC's policy statement regarding water identifies our concerns for Northern Sacramento Valley water resources. Specifically, we believe that citizens should have control over local resources; that Northern California's watersheds must be protected for future generations; and that its ground and surface water must not be exported out of the area to address misuse, waste, and over-allocation elsewhere in California. The undersigned groups and individuals submit these comments holding to one conviction:

The EIS/R should be withdrawn from public circulation until the issues listed herein can be adequately addressed.

A leading-edge organization for hydrogeologists and groundwater professionals recently posted an opinion on the declining groundwater conditions across the state.

*Thirty-six alluvial groundwater basins that have a high degree of groundwater use and reliance **may possess greater potential to incur water shortages** as a result of drought. The basins exist in the North Coast, Central Coast, **Sacramento River**, Tulare Lake, and South Coast hydrologic regions. (Groundwater Resources Association of California, Hydrovisions Summer 2014)*

2

Introduction

This EIS/R is inadequate and lacks clarity concerning findings of “no injury to other legal users of the water involved” and “no unreasonable effects on fish and wildlife.” Many of the inhabitants of the northern Sacramento Valley are solely dependent on and are “legal users of water” from the underlying strata, and varying and often disparate aquifer systems of the Sacramento Valley groundwater basin.

Californians have approved millions in bond funding since 2000 for projects that should help her citizens develop and implement strategies to improve water quality, availability, and affordability. These funds should be allocated and spent prior to the development of any project for which the sole objective is focused on ‘supplemental water.’ California’s water supply is over allocated – the very nature of that adjective means that there exists no supplemental water for anyone or anything.

3

1. The LTWT EIS/R is contrary to laws encompassing NEPA, CEQA and California Water Code.

- a. The EIS/R should be withdrawn and rewritten to reflect a programmatic EIS/R.

The very act of invoking Sec 1745.1 of the California Water Code necessitates a programmatic EIS/R. The document must follow NEPA guidelines for length and tiering as well as detailing the plan for the development and delivery of project level EIS/R(s).

4

NEPA regulation 40 CFR 1502.7 declares that the text of an EIS for “proposals of unusual scope or complexity shall normally be less than 300 pages.” It is impossible for organizations interested in thoughtfully responding to the LTWTP documents to be staffed for a thorough NEPA/CEQA review based on the unreasonable size of the released documentation.

NEPA 40 CFR 6.200(f) To eliminate duplication and to foster efficiency, the Responsible Official should use tiering (see 40 CFR 1502.20 and 1508.28) and incorporate material by reference (see 40 CFR 1502.21) as appropriate.

Associated tiered documentation must be included and show that transfers are consistent with applicable Groundwater Management Plans (GMPs) or, in the absence of a GMP, the transferring water supplier can show a transfer will not create, or contribute to, conditions of long-term overdraft in the groundwater basin.

5

- b. Groundwater substitution transfers are illegal if sourced from most Sacramento Valley groundwater basins

Section 1220 of the California Water Code states that **groundwater cannot be exported from these basins** unless pumping complies with a GMP. It is inadequate to simply list associated GMPs in a table (Table 3.3-1); each GMP listed must be included with the EIS/R documentation set and clearly show approval **'by vote from all counties that lie within'** the Sacramento Valley groundwater basin.

*...states that groundwater cannot be exported from these basins unless pumping complies with a GMP, **adopted by the county board of supervisors in collaboration with affected water districts, and approved by a vote from the counties that lie within the basin.*** (EIS/R p. 3.3-5)

According to the CVPIA Section 3405(a), the following principles must be satisfied for any transfer:

- Transfer will be limited to water that would be consumptively used or irretrievably lost to beneficial use;
- Transfer will not have significant long-term adverse impact on groundwater conditions; and
- Transfer will not adversely affect water supplies for fish and wildlife purposes.

Groundwater substitution transfers do not qualify under the intent of the first item. Groundwater substitution transfers involve foregoing the use of surface water and pumping groundwater. But this requires use of a water source that was not or would not be consumptively used given access to surface water rights. Nor is groundwater available that was irretrievably lost to beneficial use. Neither the natural recharge of groundwater nor the 'deep percolation' of excess from applied irrigation water has been defined in California water law as water irretrievably lost to a beneficial use. This first limitation provides **no water** under groundwater substitution transfers by intent of the law.

The EIS/R does not provide any defining characteristics of significant long-term adverse impacts to groundwater conditions and fails to adequately identify the current groundwater conditions of the Sacramento Valley. As such, it is impossible for decision makers to decide if impacts might occur from LTWT and to separate from impacts occurring presently.

The EIS/R fails to quantify the interactions between groundwater and surface water, which is known to be a controversial and difficult process. Lacking an understanding of this set of mechanisms leaves public agencies without the proper tools to assess the adverse affects to water supplies for fish and wildlife purposes under current groundwater usage. Increasing groundwater pumping under the climatic stresses of dry and critically dry water years should be unlawful.

6

7

8

9

2. LTWT and Process Issues

The project description has changed and the EIS/R fails to make this clear. What was stated during and subsequent to the scoping process are in fact no longer correct. It is understood where the 600,000 acre-feet originates. It is the same value that the Bay Delta Conservation Plan promotes. What is not clear is why the May 2011 Scoping Report states an entirely different value than documented within this EIS/R.¹

10

Commenters were concerned that transfers may include up to 600,000 acre-feet of water annually; however, this EIS/EIR will include a much smaller transfer volume (approximately 100,000 to 150,000 acre-feet). [Long-Term Water Transfers: Scoping Report. BOR & SLDMWA. May 2011.]

Federal regulation 40 CFR 1501.1 requires early NEPA integration into planning process prior to the preparation of the EIS emphasizing cooperative consultation among agencies.

11

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

Either the Bureau has failed to develop an understanding of the hydrologic system of the northern Sacramento Valley and has abused the mandates of NEPA (40 CFR 1501.1(b)); or the California Department of Water Resources, as a responsible agency to LTWT, is complicit in covering the adverse hydrologic conditions existing in the Sacramento Valley present day.

12

- a. Cumulative impact analysis fails to take into consideration all programs present and future.

Sec. 1.7 of the EIS/R lists issues of known controversy, yet the cumulative impacts to Water Supply, Water Quality and Groundwater Resources are missing many critical projects and list projects that will not increase dependence on groundwater resources.

13

The cumulative effects analysis must include all water transfers and programs that result in additional groundwater pumping in the Sacramento region. (EIS/R p. 1-19)

Glenn-Colusa Irrigation District Groundwater Supplemental Supply Project; DWR Future Water Supply Project; and the Bay Delta Conservation Plan currently use groundwater and will increase the exploitation of groundwater supplies from the Sacramento Valley.

- b. The purpose and need behind this project is nebulous and imprecise.

Facilitating water transfers from willing sellers upstream of the Delta to points south of the Delta are illegal, wasteful, and unnecessary; and do not of themselves define a reasonable ***purpose*** for a project.

14

¹ National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries] 2009) analyze transfers through the Delta from July to September (commonly referred to as the "transfer window") that are up to 600,000 AF in dry and critically dry years.

*The **purpose** of the Proposed Action is to facilitate and approve voluntary water transfers from willing sellers upstream of the Delta... (EIS/R p. 1-2)*

Water users all over California have a **need** for immediately implementable and flexible solutions to water supply problems. These problems include shortages from inappropriate allocation of natural supplies;² the risks inherent in living in a Mediterranean climate; and poorly envisioned projects that have left behind a wake of environmental destruction and have decimated surface and groundwater supplies.

*Water users have the **need** for immediately implementable and flexible supplemental water supplies to alleviate shortages. (EIS/R p. 1-2)*

No project should be allowed that focuses on the 'needs' of a few. This seems to be the antithesis of the purposes of NEPA and CEQA, which are set in place to ensure protection of the environment and **benefit to the public**. There would be no need for a project if California were to mandate that we live within the means of our natural water supply. The timing and place of water flow has been significantly altered, to the detriment of the environment, throughout California from the construction of dams and canals and use of rivers as modified canals. These countless acts have in turn created a limitation on our water supply. The placement and slowing of water in unnatural environments at unnatural times has resulted in water quickly evaporating or percolating to replenish overdrafted groundwater or both.

The following issues render this EIS/R incomplete; inadequate to mandated findings of "no injury to other legal users" and "no unreasonable effects on fish and wildlife" under NEPA and CEQA; and misleading: these issues preclude meaningful public review.

The EIS/R should be withdrawn from public circulation until the issues listed here can be adequately addressed.

1. **The Sacramento Valley groundwater basin is inadequately characterized to assess findings of significance under NEPA and CEQA.**
2. **Well logs included in the EIS/R depict only very shallow aquifers of the region.**
3. **EIS/R fails to adequately describe the existing hydrologic conditions of the Sacramento Valley.**
4. **The selection process for a 'reasonable' range of alternatives is biased.**
5. **Mitigation methods are inadequate to address the significant impacts resulting from project alternatives.**

² Abuse of beneficial use guidelines under California water law – the very nature of moving water from the Delta to points far south is an abuse of the constitutional provisions that prohibit waste and unreasonable use.

BEC incorporates by reference within these comments those of several other correspondents regarding the LTWT.³

16

Discussion

1. The Sacramento Valley groundwater basin is inadequately characterized to assess findings of significance under NEPA and CEQA for the LTWT EIS/R.

The EIS/R inaccurately and detrimentally characterizes the Sacramento Valley as a large, contiguous, and homogenous groundwater basin that extends from a boundary just north of Red Bluff south to the Cosumnes River. The description of depth to base of fresh water essentially paints the aquifer system as one large alluvial-filled 'bathtub.' Inconsistencies exist throughout the EIS/R that understates the complex nature of the aquifer systems that exist within the basin boundaries of the Sacramento Valley. And, statements such as follows, solidify the intention of this document to misrepresent the groundwater system of the Sacramento Valley (see further discussion of this under Issue 3. below).

17

Figure 3.3-8 and Figure 3.3-9 show the location and groundwater elevation of select monitoring wells that portray the local groundwater elevations within the Sacramento Valley Groundwater Basin. (EIS/R p. 3.3.-22)

The EIS/R fails to provide adequate discussions concerning the unique surface hydrology, geologic and hydrogeologic characteristics of the subbasins found within the Sacramento Valley. For example, there exists no mention of the confining layers and varying stratigraphy created under differing formation periods and depositional environments of the Tuscan Formation. The data and analyses incorporated in the EIS/R are cherry-picked, providing a 30,000-foot view of the basin and fails to provide a rigorous definition of the environment and groundwater conditions of the valley today. This oversight results in a suspect analysis. The process of revealing or exposing only what is favorable to the lead agencies shrouds the methodology of the EIS/R, leaving the public and other agencies inadequate tools to assess the results.

2. Selected well logs included in the EIS/R depict only the very shallow aquifers of the region. Inclusion of this data simply shrouds reality, weakening any credence the associated assessment and analysis may have established with this effort.

The six (6) monitoring wells selected to "portray" local groundwater elevations within the northern Sacramento Valley groundwater basin are all very shallow. The average depth to water below ground surface (bgs) ranges between 5' and 45' bgs. While the historical low of any of the wells never exceeded 100' bgs. These wells do not represent the groundwater elevations nor does the discussion surrounding the

18

³ Butte Environmental Council joins with the comments of Tony St. Amant and AquAlliance.

hydrographs represent groundwater conditions currently found throughout the northern Sacramento Valley.

Shallow wells shown in the EIS/R may show an endemic decline from underlying aquifers “recovering” water and a long-evolving change in groundwater storage capacity. In the case of confined aquifers, “recovery” might be dewatering the confining layers. Recharge and recovery are not the same hydrologic mechanisms and differ in the ability to ascertain the health of a groundwater production zone.

Recovery of groundwater levels in a production zone is not indicative of a balanced aquifer system.

Figure 1 shows a significant decline and little recovery that occurred during the summer of 2007. The City of Chico maintains a very steady draw from their groundwater production wells. These hydrographs depict a stress that has altered the efficacy and perhaps the storage capacity of the production zone that these monitoring wells represent. The questions this EIS/R fails to address are considerable. What caused this irreversible change in the groundwater source? What affects does this impact have on the quality of the water sourced from this production zone? What affects will this have on the Central Plume? How many other instances of similar significance have occurred throughout the Sacramento Valley groundwater basin? To what extent will similar impacts occur under the pumping proposed through the LTWT throughout the Sacramento Valley groundwater basin?

Central Plume Intermediate and Deep Zone Aquifers
Semiannual Groundwater Monitoring Report
Contract No. 11-T1080, Work Order No. 1-080-1.0-100035

Section 3.0
July 2014
Page 3-10

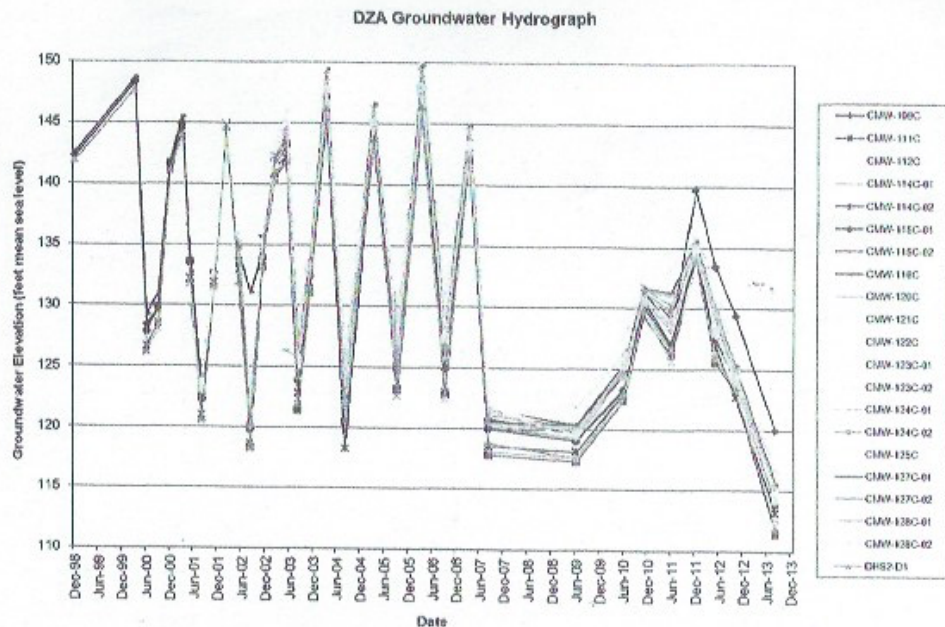


Figure 3-2. DZA Groundwater Hydrograph

Figure 1: Monitoring wells of the Central Plume for intermediate and deep aquifer zones.

3. EIS/R fails to adequately describe the existing hydrologic conditions of the Sacramento Valley. Modeling lacks appropriate boundary conditions and fails to evaluate stresses given current and a best assessment of future conditions.

Use of the SACFEM2013 model to simulate stresses on regional surface and subsurface hydrology due to additional groundwater pumping over baseline from groundwater substitution transfers was a useless analysis of the past. Baseline conditions are not delineated and it is unclear if they represent the modeling period or the proposed period for transfers. It is necessary to model impacts under the most accurate assumptions of the hydrologic conditions surrounding the transfer period to understand and mitigate for the most likely range of stresses. The assessment process fails to do just that.

Standard methods of study for groundwater basins are not easily applied to the Sacramento Valley. Standard assumptions cannot account for the hydrogeologic complexity, such as anisotropy, associated with the stratigraphy and range of geologic materials present in the Tuscan, Mehrten and Tehama formations. Numerical groundwater models are intended to help shed light on the possible range of responses a system might exhibit over space and time given predictable changes in stresses. They should not be used to support decisions that may jeopardize the long-term sustainability of water resources of the northern Sacramento Valley.

The following statements from the EIS/R show the vagueness surrounding results of the modeling and analyses. The known or estimated impacts are not clearly quantified or defined making it impossible for public officials to assess potential impacts to their jurisdictions. Specifically, terms like long-term recovery and short-term declines must be defined and quantified for every legal user of water supplies sourced above and below the surface.

...most of the recovery near the pumping zone occurs in the year after the transfer event. Groundwater levels return to approximately 75 percent of the baseline level five years after the single year transfer event in WY 1981 and between 50-75 percent six years after the multi-year transfer event... (EIS/R p. 3.3-70)

...the maximum groundwater level declines resulting from substitution transfers within the Sacramento Valley Groundwater Basin range widely depending on the distance from the transfer groundwater pumping.

Seasonal groundwater level declines would be greater than the typical fluctuation when substitution pumping is included, indicating the potential for adverse effects. (EIS/R p. 3.3-81)

The EIS/R fails to define and quantify the following terms: seasonal groundwater level declines and typical fluctuation (there is nothing typical in the changes experienced presently in this valley, see the decadal groundwater elevation changes in Fig. 2.). What are the “baselines” for the supporting modeling and analyses behind this EIS/R? Were these “baselines” established under climatic and hydrologic conditions of nearly a half century ago?

The potential for adverse drawdown effects would increase as the amount of extracted water increased. The potential for adverse effects would be higher during dry years, when baseline fluctuations would already be large and groundwater levels would likely be lower than normal. (EIS/R p. 3.3-81)

The EIS/R fails to define and quantify the adverse drawdown effects. What are the differences in stresses to the entire system under dry and critically dry years? It is disingenuous to document, in a time when wells are going dry across the Sacramento Valley, that reduction in well **yields** is the greatest concern the modeling and analyses behind this EIS/R has uncovered.

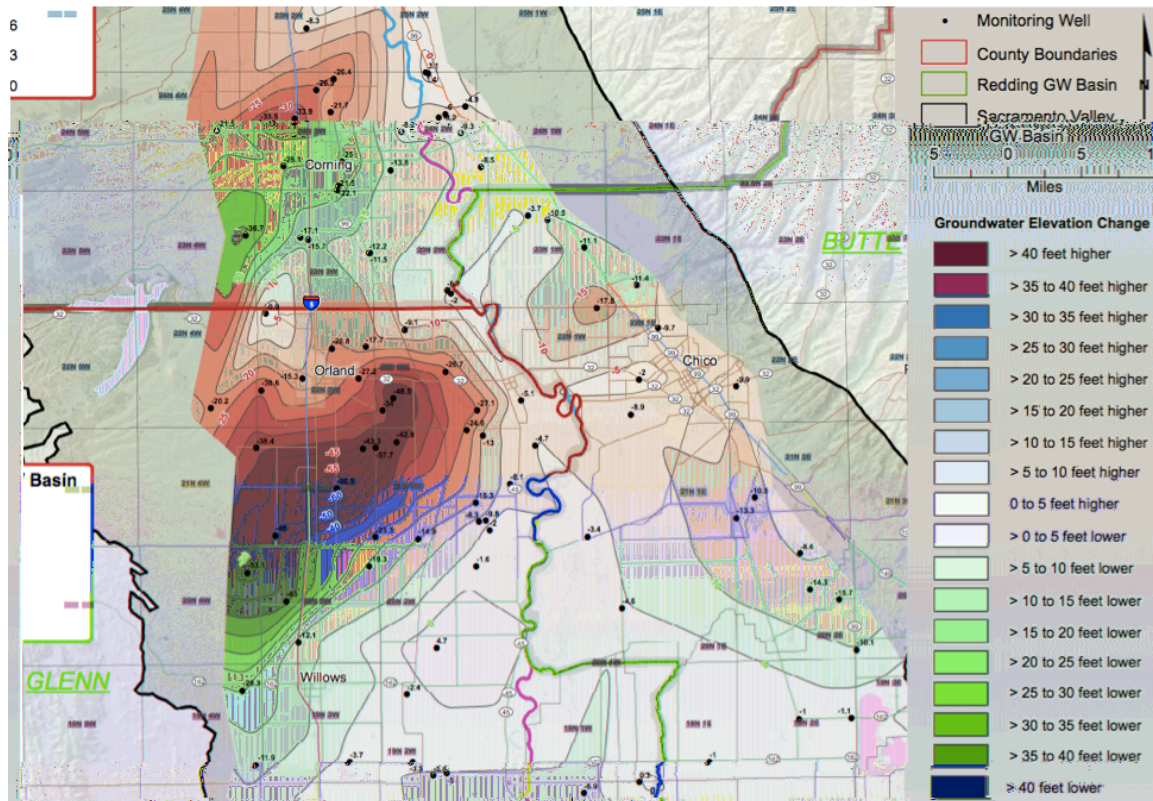


Figure 2: Shallow groundwater elevation changes Summer 2004 to Summer 2014 for well depths 100-450' bgs

4. The selection process for a 'reasonable' range of alternatives is biased.

It appears that alternatives were studied only from the perspective of benefits to water supply and not to the full intent of NEPA and CEQA. The process is unreasonably biased toward the narrow interests of the lead agency SLDMWA and does not adequately protect the region from which the water will be produced. The EIS/R must show substantial treatment, that is **rigorous exploration and objective evaluation**, of all alternatives.⁴

⁴ § 1502.14 Alternatives including the proposed action. This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§1502.16), it should

Metrics used to evaluate alternatives and establish a purpose and need for this project are biased and lack objective criteria (Table 2-1, p. 2-4). Meeting the intent of the CVPIA mandates, such as retiring lands would better serve the entire state and would provide immediate and long-term benefits. All Californians are in need of flexibility in the water supply system during dry or critically dry years. Those of us dependent on groundwater should not fear the extraction of their resource for sale by willing sellers during a time when its use will increase.

Flexibility is not a reasonable or fair metric. There are many other projects the Bureau and SLDMWA can develop to secure the water necessary to meet the needs of the region that are based on hydrologic reality of that region.

Robbing one region of their primary source of water to provide another region with additional water is not a reasonable or fair metric to evaluate alternatives in the context that has been established through this project. For example, Agricultural Conservation in the seller service area somehow meets all three-evaluation metrics while Ag Conservation in the buyer service region does not.

*Immediate: the term proposed for this EIS/EIR is 2015 through 2024. This period is relatively short, and measures need to be able to **provide some measurable benefit** within this time period.*

*Flexible: project **participants need water in some years, but not in others**. They need measures that have the flexibility to be used only when needed.*

*Provide **Substantial** Water: project participants need measures that have the capability of providing **additional water to regions** that are experiencing shortages. (EIS/R p. ES-7; 2-3; 2-4; **and** 4-1)*

5. Mitigation methods are inadequate to address the significant impacts resulting from project alternatives.

A 'reasonable range' of alternatives was limited by a poorly defined purpose and the screaming bias inherent in the charters of the lead agencies'.⁵ Environmental impacts and consequences were inappropriately analyzed and lack a fair cumulative analysis. The baseline conditions were not identified or assessed or are nonsense and the existing or known projects dependent on increasing the exploitation of the Sacramento Valley groundwater basin were not included. The EIS/R fails to adequately define the resources that might be impacted: stream flow depletions; irrecoverable groundwater losses; subsidence; and water quality changes in surface and the subsurface. The EIS/R fails to provide a clear line of reasoning in its conclusions related to the direct, indirect, and cumulative impacts. The EIS/R fails to adequately mitigate for potential or known impacts from the project alternatives on the physical, natural, and socioeconomic environment of the region.

present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.

⁵ Comment Letter 1, Tony St. Amant, November 3, 2014 is incorporated by reference.

NEPA requires that mitigation involve:

§ 1508.20 Mitigation. *Mitigation includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments.*

Groundwater substitution transfers could decrease flows in neighboring surface water bodies and alter existing subsurface hydrology resulting in a variety of effects to groundwater levels, land subsidence, and groundwater quality. The EIS/R indicates repeatedly that groundwater basins require an unknown amount of time to recharge following a transfer.

The reductions in CVP and SWP supplies are not complete within one year, but can extend over multiple years as the groundwater aquifer refills. (EIS/R p. 3.1-17)

a. Streamflow depletion

Applying a Streamflow Depletion Factor is not a mitigation method (SW-1). It simply and often erroneously identifies how much surface water might be lost due to groundwater pumping. It is a method of charging willing sellers for water the state owns (stream flow) that is assumed to be lost to groundwater pumping. According to Trevor Joseph, DWR, streamflow depletion factors are controversial and little understood with regard to surface and groundwater interactions and the time delays associated with “additional pumping.”

b. Irrecoverable groundwater losses

Dependence on GMPs to reduce the significance of impacts as a result of groundwater substitution water transfers is not an adequate mitigation method (GW-1). In 2014, DWR and the California Water Foundation performed separate studies to assess the current state of groundwater management planning in California. Both organizations found GMPs lacking mandated components necessary to promote good groundwater management practices and monitor groundwater levels. DWR found plans that include all California Water Code requirements cover just 17% of the groundwater basins defined in Bulletin 118.⁶

⁶ Many plans lacked basic basin management objectives (BMOs), such as groundwater level or quality thresholds. Groundwater data, crucial for effective management, is lacking in many groundwater basins. There has been slight improvement in the plans since the passage of SB 1938, which requires specific elements to be included in a GMP in order for an agency to be eligible for certain DWR funding. However, most plans did not contain an implementation strategy for ensuring that BMOs, when articulated, will be met. Stakeholder outreach and participation was either non-existent or not described adequately in many, if not most, of the plans. Additionally, 28% of the plans were written in 2002 or earlier and have not been updated.

An Evaluation of California Groundwater Management Planning, California Water Foundation, July 2014

c. Subsidence

The potential for serious impacts due to subsidence are clearly defined by DWR's latest report.⁷ The fact that this report is not referenced is problematic, shedding more light on the egregious analytical shortcomings of this EIS/R.

Groundwater extraction for groundwater substitution transfers would decrease groundwater levels, increasing the potential for subsidence. Most areas of the Sacramento Valley Groundwater Basin have not experienced land subsidence that has caused impacts to the overlying land. (EIS/R p. 3.3-82)

d. Water quality

The environmental assessment surrounding the LTWT completely ignores groundwater quality issues. There are numerous plumes throughout the Sacramento Valley for which the Department of Toxic Substance Control has oversight.

Conclusion

The EIS/R should be withdrawn from public circulation; and

The EIS/R should be modified to:

Reflect the elements and requirements of a programmatic EIS/R, strictly adhering to page limitations and tiering of appropriate project level environmental documentation; and

Reflect a legally appropriate lead agency, such as a group of agencies, including SLDMWA and the counties that overlie the DWR Bulletin 118 groundwater basins and confined (deeper) aquifers from which groundwater substitution transfers may occur, organized into a cooperative effort by contract, joint exercise of powers, or similar device.⁸

Sincerely,



Robyn Difalco
Executive Director
Butte Environmental Council



Carol Perkins
Water Policy Advocate
Butte Environmental Council

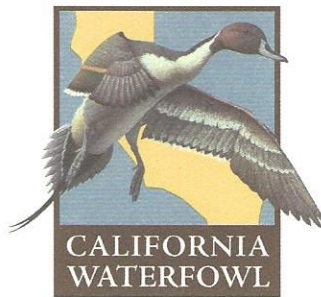
⁷ *Summary of Recent, Historical, and Estimated Potential for Future Land Subsidence in California*, CA Department of Water Resources, October 2014.

⁸ 14 CCR § 15051 (d).

cc: Nancy Quan, State Water Project Analysis Office
Debbie Davis, Office of Planning and Research
John Laird, Secretary – California Natural Resources Agency
Craig McNamara, President – California Department of Food and Agriculture
Karen Ross, Secretary– California Department of Food and Agriculture
Matthew Rodriquez, Secretary – California Environmental Protection Agency

December 1, 2014

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825



Re: California Waterfowl Association Comments on the Draft EIS/EIR on Proposed Long-Term Water Transfers

Delivered by email.

Dear Mr. Hubbard:

Thank you for the opportunity to comment on the draft EIR/EIS on Proposed Long-term Water Transfers. The California Waterfowl Association is a statewide nonprofit organization whose principal objective is the conservation of the state's waterfowl, wetlands, and hunting heritage. California Waterfowl believes hunters have been the most important force in conserving waterfowl and wetlands. California Waterfowl biologists are leading experts on designing, operating, and maintaining managed wetlands throughout California, including the Sacramento/San Joaquin River Delta and the Suisun Marsh.

Since 1945, California Waterfowl has been active in creating and maintaining managed wetlands habitats for migratory waterfowl, including ducks and geese. Because of the loss of 95 percent of the historical wetlands in California, the remaining wetlands, two-thirds of which are in private ownership, have to be intensively managed to provide the optimum habitat value for migratory waterfowl. While not listed under the state or federal endangered species acts, migratory waterfowl are protected by legislation or treaty, including the North American Wetlands Conservation Act (NACWA) and the international Migratory Bird Treaty.

The state and federal governments and private landowners such as farmers and duck clubs have invested millions of dollars in managed wetlands for the primary benefit of migratory waterfowl. These managed wetlands also benefit a variety of other bird species, as well as reptiles, fish, and mammals. They use natural and artificial water flows to flood wetlands, and then use developed infrastructure to hold and drain floodwaters as appropriate to provide food resources and suitable seasonal habitat.

California Waterfowl has reviewed the Draft EIR/EIS on proposed long-term water transfers. As proposed in the current drafts, long-term water transfers could have significant and unavoidable impacts on wetland and waterfowl resources in the Sacramento and San Joaquin. Section 3.8 of Chapter 3 discusses environmental impacts to terrestrial resources from the water transfers. California Waterfowl's main concern is with the natural communities and agricultural habitats in the sellers' service area identified in Section 3.8.1.3.1. California Waterfowl is primarily interested in impacts arising from Alternatives 2, 3, and 4.

In California Waterfowl's estimation, the greatest impacts to migratory waterfowl would result from cropland idling and shifting transfers, as discussed in Section 3.8.2.1.2. Migratory waterfowl depend

heavily for food resources on the post-harvest and winter flooding of rice fields for decomposition of rice stubble. Section 3.8.2.1.2 correctly identifies the impacts of cropland idling and shifting transfers on migratory waterfowl. The idling of cropland and the shifting of water will deprive waterfowl of food resources and habitat. However, as also pointed out at the top of page 3.8-35, fallowing of fields provides an opportunity to develop nesting habitat.

1

California Waterfowl was the sponsor of a bill in the state Legislature that declares it is the policy of the state to encourage the planting of dry cover crops on fallowed fields for the purpose of providing nesting habitat for local, resident birds, such as mallards. SB 749 (Wolk – Chapter 387, Statutes of 2013) requires the Department of Water Resources to provide guidelines to landowners on how to create and maintain nesting cover for resident waterfowl and other birds on fallowed lands. The EIS/EIR should include a requirement of this type of affirmative action to mitigate for the loss of habitat from fallowed fields.

2

Please contact me at (916) 217-5117, or at jvolberg@calwaterfowl.org if you would like further information on this suggested mitigation activity.

Sincerely,

Jeffrey A. Volberg

Director of Water Law & Policy



CENTER *for* BIOLOGICAL DIVERSITY

Sent Via Email to: bhubbard@usbr.gov

December 1, 2014

Brad Hubbard
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Central Valley Project Long-term Water Transfers Draft Environmental Impact Statement/Environmental Impact Report

Dear Mr. Hubbard:

These comments are submitted on behalf of the Center for Biological Diversity (Center) regarding the Central Valley Project (CVP) Long-term Water Transfers Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS).

The Center for Biological Diversity is a national, nonprofit organization with nearly 158,000 members and activists in California who are dedicated to the protection of endangered species and wild places. The Center has worked to protect and restore endangered species and their habitats in the Sacramento River and San Joaquin River watersheds since the late 1990s.

The proposes water transfers would export water from the Sacramento and San Joaquin regions to the Bay Area and Central Valley from 2015-2024 (Project). The Project would occur through methods including reservoir releases, groundwater substitution, and crop idling/shifting. These water transfers would drain both surface and groundwater resources from the Sacramento River and San Joaquin River watersheds (Exporting Areas), imposing significant and irreversible threats to the sensitive species that rely on these water resources and associated aquatic and riparian habitats to survive. However, the DEIR/EIS fails to establish an adequate baseline by which to assess Project impacts, fails to adopt an acceptable methodology for accurately determining existing conditions and potential Project impacts, and fails to sufficiently assess or provide adequate measures to minimize or mitigate the impacts on sensitive species and their habitats within the Exporting Areas.

Reservoir Releases

The DEIR/EIS concludes that reservoir releases will have less than significant impacts on natural communities and special-status species since they would not reduce

Alaska • Arizona • California • Florida • Minnesota • Nevada • New Mexico • New York • Oregon • Vermont • Washington, DC

reservoir storage in Export Areas by more than 10% during normal to wet water years. (DEIR/EIS, at 3.8-47.) In particular, the DEIR/EIS concludes that, with the exception of Bear River, reservoir releases from the Project under the Proposed Action would reduce surface water flows by less than 10% and therefore less than significant levels in the Sacramento River watershed. (DEIR/EIS, at 3.8-49.) The 10% threshold of significance appears arbitrary since it does not correspond with the significance criteria established, and does not refer to other sections of the DEIR/EIS. (DEIR/EIS, at 3.8-49.) Additionally, the DEIR/EIS unreasonably assumes there would be sufficient surface water flows within the Exporting Areas for the 10% drawdown during drought periods.

The DEIR/EIS also lacks historic flow data on twenty-one smaller rivers that would be impacted by the Project. (DEIR/EIS, at 3.8-51.) Therefore the DEIR/EIS fails to provide sufficient information regarding existing conditions in order to establish an adequate baseline for assessing impacts. Consequently, the DEIR/EIS cannot accurately assess potential Project impacts or provide mitigation measures without first establishing a baseline of existing conditions from which to analyze.

The DEIR/EIS also estimates that since the Project would reduce surface water flow and Delta outflow but therefore would have no significant biological impacts. (DEIR/EIS, at 3.8-62; 3.7-12.) However, the DEIR/EIS provides inadequate data to support these conclusions. The Project will likely result in significant impacts to listed fish species including Chinook salmon and Central Valley steelhead, green and white sturgeon, and Delta and longfin smelt. For instance, the DEIR/EIS states that water transfers would coincide with the spawning period of winter-run Chinook salmon and could alter stream flow and temperature in the upper Sacramento River. (DEIR/EIS, at 3.7-12.) Yet the DEIR/EIS concludes that the Project would not result in significant effect on this and other species based simply on the 10% flow reduction criteria. (DEIR/EIS, at 3.7-25.)

Additionally, the DEIR/EIS admits that the Project would reduce reservoir waters by 18.2% during critically dry years in August and September. (*Id.*) These drawdown estimates during critically dry years such as this year are unacceptable since there will unlikely be sufficient water for the Project to operate without depleting the entire reservoir storage during drought periods. The DEIR/EIS is thus misleading by claiming that reductions in reservoir storage would be less than significant *over all*, while downplaying the fact that drawdown during critically dry years like this one would be significant and likely infeasible.

Groundwater substitution transfer

First, the data that the DEIR/EIS relies on to assess groundwater substitution impacts on stream water is severely outdated. The impacts of groundwater substitution transfer on stream water depletion was calculated based on data on water export availability in the Region from 1970 to 2003 (DEIR/EIS, at 3.8-38.) This method fails to

include data that reflect *reduced* exports based on current water realities or regulatory constraints including the 2008 and 2009 biological opinions. Thus the DEIR/EIS fails to establish an adequate baseline by which to assess Project impacts.

6

Similarly, criteria that the DEIR/EIS adopts to evaluate groundwater substitution impacts on surface waterways are also flawed. DEIR/EIS dismisses small waterways near modeled groundwater transfer areas as not warranting further modeling if water flow for these small waterways will be reduced by 1 cubic-foot per second or 10% since “the effect was considered too small to have a substantial effect on terrestrial species.” (DEIR, at 3.8-38.) This appears to be an arbitrary threshold of significance for evaluating impacts on small waterways since it does not correspond with significance criteria on 3.8-43 and the DEIR/EIS does not refer to other sections of the document for support. (DEIR, at 3.8-43.) The DEIR/EIS also fails to discuss how groundwater substitution would affect aquatic species in small waterways. A 1 cubic-foot per second reduction in water flow could affect both aquatic and terrestrial species especially in drought periods.

The Project would increase groundwater pumping for irrigation in the Exporting Areas to substitute surface water that would be exported, which the DEIR/EIS states could result in a reduction in a level of groundwater in the vicinity of pumps. (DEIR/EIS, at 3.8-31.)

7

However, the DEIR concludes that groundwater drawdown from increased will be less than significant since groundwater modeling results indicate that shallow groundwater is typically deeper than 15 feet in most locations under existing conditions and not associated with groundwater-dependent ecosystems. Even if species such the valley oak rely on deeper groundwater, the DEIR/EIS states groundwater drawdown impacts to these species to be minimal by asserting that “these species have further adapted to California’s Mediterranean climate of wet winters and hot dry summers.” (DEIR, at 3.8-32.) The DEIR/EIS concludes that groundwater drawdown under the Proposed Action would have less than significant impacts on natural communities and special-status plants. (DEIR/EIS, at 3.8-47.) The only justification the DEIR/EIS affords in reaching this conclusion is that “Plants within these communities would be able to adjust to the small reductions in groundwater levels because the draw down is expected to occur slowly through the growing season, allowing plants to adjust their root growth to accommodate the change.” (*Id.*) These assertions are not supported in the DEIR/EIS.

The DEIR/EIS further dismisses the negative impacts of groundwater drawdown that would result from the Project on riparian ecosystems, stating that “Because of the interaction of surface flows and groundwater flows in riparian systems, including associated wetlands, enables faster recharge of groundwater, these systems are less likely to be impacted by groundwater drawdown as a result of the action alternatives.” (*Id.*) This statement ignores the fact that Exporting Areas will take a double hit of reduce surface *and* groundwater resources. The DEIR/EIS also inappropriately assumes that there would be sufficient surface waters would to recharge groundwater, ignoring that

8

this is not the case during drought periods. In addition, surface and groundwater resources in the Sacramento region are highly interconnected. (Howard 2010.) Therefore any drawdown of surface water or groundwater would very likely impact the level of the other. Given the Exporting Area's high surface and groundwater connectivity the DEIR/EIS fails to accurately address the likelihood that reducing surface water flow will reduce groundwater recharge potential in the area.

8

The DEIR/EIS would require implementing entities to adopt monitoring program and mitigation plans to alleviate impacts from groundwater substitution transfers. (DEIR/EIS, at 3.3-88 to 3.3-91). However, these measures are inadequate to minimize and mitigate the significant impacts that would result from groundwater drawdown since they do not provide sufficient information for decision-makers or the public to be able to ascertain whether they would be effective or enforceable. In particular, the DEIR/EIS fails to require monitoring and reviewing the impacts groundwater pumping on connected surface waters and groundwater-dependent ecosystems. Furthermore, the DEIR/EIS inappropriately defers the responsibility for developing specific mitigation plans as well as criteria for significance to each individual seller. (DEIR, at 3.3-90.)

9

Finally, the DEIR/EIS fail to and should be revised to address how it would comply with existing groundwater management plans in the Exporting Areas as well as the statewide groundwater legislation that will be in effect beginning January 1, 2015.

10

Cropland idling/shifting

The Proposed Action would allow idling/shifting of 8,500 acres of upland cropland and 51,473 acres of seasonally flooded agriculture. (DEIR/EIS, at 3.8-63 and 3.8-64.) The DEIR/EIS recognizes that cropland idling/crop shifting would potentially affect some wildlife species that depend on cropland for foraging and/or depend on habitat associated with cropland and managed agricultural lands, as well as downstream habitat dependent upon agricultural flow returns. (DEIR/EIS, at 3.8-33.)

However, the DEIR/EIS states without support that "bird species that would be potentially affected by idling of upland crops would be capable of dispersing to other areas or other non-idled parcels." (*Id.*) The DEIR/EIS unreasonably assumes that migratory birds will still be able to find adequate food in years when upland crops are fallowed for transfers. However, in drought years, birds are already stressed by lack of food availability. Additionally, the DEIR/EIS itself recognizes yet fails to take into account that birds with limited distribution and specific breeding and foraging requirements including the greater sandhill crane and black tern will not adapt to crop idling/shifting. (DEIR/EIS, at 3.8-26 to 3.8-27.)

11

The DEIR/EIS also admits that crop idling/shifting could contribute to habitat fragmentation by preventing species or moving between areas. (DEIR, at 3.8-35.) The DEIR/EIS acknowledges that the "distribution of these water year types within the action

12

period is unknown. Additionally, the exact locations of cropland idling/shifting actions would not be known until the spring of each year, when water acquisition decisions are made.” (DEIR/EIS, at 3.8-35.) The DEIR/EIS does not have or provide sufficient information regarding where/when crop idling/shifting will take place, and therefore cannot calculate the potential for habitat reduction and fragmentation will result from crop idling/shifting activities. Yet the DEIR/EIS concludes that “because crop rotation and idling are standard practices, species that reside in agricultural areas adjust to these types of activities.” (*Id.*) This statement is not supported by fact and contrary to the DEIR/EIS’ previous statements regarding recognizing habitat fragmentation as a threat to species survival. (DEIR/EIS, at 3.8-33 to 3.8-35.)

12

The DEIR/EIS provides that upland crop idling/shifting would not impact migratory bird populations since there are other areas to forage and species will adapt by looking for other forage areas. (DEIR/EIS, at 3.8-63.) As discussed above, the DEIR/EIS does not adequately address the significant adverse impacts that would result from these activities. The DEIR/EIS also does not provide any measures to mitigate these impacts. Instead, the DEIR/EIS simply states that “cropland idling decisions would be made early in the year before the general breeding season of most birds that have the potential to occur in the area of analysis,” without providing further detail on if or how these decisions would reduce impacts to bird species (DEIR, 3.8-63.)

The DEIR/EIS provides that proposed environmental commitments would reduce potential impacts to seasonally flooded cropland idling/shifting to less than significant by ensuring canals bordering rice parcels continue to carry water even when adjacent parcels are idled. (DEIR/EIS, at 3.8-65, 3.8-67.) The DEIR/EIS assumes that watered canals provide sufficient habitat for bird species, and fails to explain how these canals would sufficiently make up for the nearly 51,500 acres of habitat for migratory birds and other birds including the tri-colored blackbird, western pond turtle, giant garter snake, and other protected and sensitive species that would be lost due to fallowing the rice parcels.

13

This Project will only worsen those existing conditions under the drought, and inadequate mitigation is proposed to mitigate the significant resulting impacts to migratory birds and other species that currently rely on agricultural lands for survival.

Conclusion

Thank you for the opportunity to submit comments on this proposed Project. We look forward to working to assure that the Project and environmental review conforms to the requirements of state and federal law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form. Please do not hesitate to contact the Center with any questions at the number listed below. We look forward to reviewing the U.S.

14

Bureau of Reclamation's responses to these comments in the Final EIR/EIS for this Project once it has been completed.

14

Sincerely,



Chelsea Tu
Staff Attorney, Urban Wildlands Program

REFERENCES

Howard J, Merrifield, M. (2010). Mapping Groundwater Dependent Ecosystems in California. *Available at:*
<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0011249>.

Buckman, Carolyn

From: HUBBARD, BRADLEY <bhubbard@usbr.gov>
Sent: Thursday, October 23, 2014 5:00 PM
To: Buckman, Carolyn; Veronese, Gina; Frances Mizuno
Subject: Fwd: Question regarding Long-Term Water Transfers Draft EIS-EIR

----- Forwarded message -----

From: **Rachel Zwillinger** <RZWILLINGER@defenders.org>
Date: Thu, Oct 23, 2014 at 4:58 PM
Subject: Question regarding Long-Term Water Transfers Draft EIS-EIR
To: "bhubbard@usbr.gov" <bhubbard@usbr.gov>

Hi Brad,

I have a quick question about the Long-Term Water Transfers Draft EIS-EIR. Section 6.2.3 of the draft states that "Reclamation will submit a Biological Assessment for USFWS review under Section 7 of the Federal Endangered Species Act." Will there be a single biological opinion that covers all of the transfers that are analyzed in the Draft EIS-EIR? And do you have any sense of when the Section 7 analysis will occur?

1

Thanks,

Rachel



Rachel Zwillinger
Water Policy Advisor

Defenders of Wildlife
1303 J Street, Suite 270, Sacramento, CA 95814
Tel: (415) 686-2233
rzwillinger@defenders.org | www.defenders.org

--

Thanks,

Brad

**California Office**

1303 J Street, Suite 270 | Sacramento, CA 95814 | tel 916.313.5800 | fax 916.313.5812
www.defenders.org

December 1, 2014

Brad Hubbard
U.S. Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Sent via U.S. Mail and via email to bhubbard@usbr.gov.

Re: Comments on the Long-Term Water Transfers Draft Environmental Impact Statement / Environmental Impact Report

Dear Mr. Hubbard:

On behalf of Defenders of Wildlife, which has approximately 1,200,000 supporters and members, 180,000 of whom are Californians, we are writing to provide comments on the Long-Term Water Transfers Draft Environmental Impact Statement/Environmental Impact Report ("Draft"). We are sympathetic to the fact that management decisions involving water transfers need to occur quickly, and believe that an Environmental Impact Statement ("EIS")/Environmental Impact Report ("EIR") covering an extended time period could be beneficial. However, the Draft suffers from several fundamental flaws that undermine its ability to provide information regarding the environmental impacts of the proposed long-term water transfers, and that render the document legally inadequate.

First, the Draft includes several "environmental commitments" intended to avoid significant impacts that could be caused by crop idling transfers. These commitments, however, are inadequate to protect the threatened giant garter snake and bird species that depend upon agricultural lands in the project area. Because significant environmental impacts will remain after implementation of the proposed commitments, we have suggested additional environmental commitments that should be included either as part of the project description, or as mitigation measures. Second, the Draft entirely fails to analyze the proposed water transfers' impacts on waterfowl, shorebirds, and south of Delta refuges, although the impacts to these public trust resources could be profound. Third, the Draft uses an arbitrary and not biologically-based screening threshold to avoid analyzing the impacts that flow reductions caused by the proposed transfers could have on fisheries and sensitive terrestrial species. The Draft also fails to account for climate change impacts in its operational modeling, does not consider an adequate range of alternatives, and fails to include foreseeable projects in its cumulative impacts analysis.

These deficiencies and the others that we describe below are so substantial that we believe the Bureau of Reclamation (“Reclamation”) and the San Luis & Delta-Mendota Water Authority (“SLDMWA”) should issue a revised draft EIS/EIR for the proposed long-term water transfers. Remedying the problems in the current Draft will require modifications to the proposed action and significant new analysis, and the public and the project proponents would benefit from another round of review before the document is finalized.

On the pages that follow, we discuss the problems with the Draft in greater detail, and provide suggestions for how the deficiencies should be addressed in a revised draft EIS/EIR.

I. The Draft Fails to Adequately Analyze Impacts to Wildlife from Crop Idling Transfers, and Fails to Prescribe Required Mitigation

The National Environmental Policy Act (“NEPA”) has “twin aims. First, it places upon [a federal] agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (citation and internal quotation marks omitted). To achieve these goals, “[a]n EIS must include a comprehensive discussion of all substantial environmental impacts and inform the public of any reasonable alternatives which could avoid or minimize these adverse impacts.” *High Sierra Hikers Ass’n v. U.S. Dep’t of Interior*, 848 F. Supp. 2d 1036, 1048-1049 (N.D. Cal. 2012) (citing 40 C.F.R. § 1502.1). NEPA “emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (quotation marks and citation omitted).

Similarly, the California Environmental Quality Act (“CEQA”) is intended to inform decision makers and the public about the potentially significant environmental effects of proposed projects. *See, e.g.*, 14 Cal. Code Regs. § 15002. To this end, an EIR “shall include a detailed statement setting forth . . . [a]ll significant effects on the environment of the proposed project” (Cal. Pub. Res. Code § 21100), and “must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 450 (2007). If a significant effect on the environment is identified, an EIR is required to include provisions to avoid or mitigate the significant effect. Cal. Pub. Res. Code § 21081. Mitigation must be “fully enforceable through permit conditions, agreements, or other measures,” (*id.* § 21081.6 (b)) and there must be a reporting or monitoring program to ensure that the mitigation measures are implemented (*id.* § 21081.6 (a)). “The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” *Cal. Clean Energy Comm. v. City of Woodland*, 225 Cal. App. 4th 173, 189 (2014) (citation omitted).

A. The Environmental Commitments are Insufficient to Avoid Significant Impacts to Wildlife from Crop Idling Transfers and Additional Mitigation is Required

The proposed action includes several “environmental commitments,” which are intended to “avoid potential environmental impacts from water transfers.” Draft EIS/EIR at 2-29. These environmental commitments are critical to the Draft’s conclusion that the proposed action will not have a significant impact on special status plant and animal species. For example, the Draft concludes that significant impacts to the following species from crop idling transfers will be avoided, in whole or in part, by implementation of the environmental commitments: giant garter snake (*id.* at 3.8-70); Pacific pond turtle (*id.* at 3.8-71 to 3.8-72); greater sandhill crane (*id.* at 3.8-76); long-billed curlew (*id.* at 3.8-76); tricolored blackbird (*id.* at 3.8-77); white-faced ibis (*id.* at 3.8-78); purple martin (*id.* at 3.8-79); yellow-headed blackbird¹ (*id.* at 3.8-79 to 3.8-80); special status plant species (*id.* at 3.8-67); and special status bird species (*id.* at 3.8-74, 3.8-80).

However, as we explain below, these critically important environmental commitments are inadequate to avoid significant impacts to the species listed above, including the giant garter snake and sensitive birds. Because the impacts from crop idling transfers remain significant after implementation of the environmental commitments, CEQA requires that the action agencies identify additional mitigation measures that, if implemented, would reduce the impacts of the project to below the significance threshold. *See* Cal. Pub. Res. Code § 21081. In the sections that follow, we explain why the environmental commitments are inadequate to ameliorate significant impacts from crop idling transfers, and suggest additional mitigation measures that, if implemented, would help the agencies comply with legally-required mitigation obligations.

1. The Environmental Commitments Do Not Adequately Protect Giant Garter Snakes

The giant garter snake is listed as threatened under both the Federal Endangered Species Act and California Endangered Species Act. *See* Draft EIS/EIR at 3.8-23. The snake “primarily occurs in areas with dense networks of canals among rice agriculture and wetlands,” and has been observed within the Sacramento Valley portion of the Seller Service Area. *Id.* at 3.8-23 to 3.8-24. The Draft acknowledges that giant garter snakes may be substantially impacted by crop idling transfers. For example, it states that “[a]ny level of cropland idling/shifting would reduce the availability of stable wetland areas during a particular transfer year and may reduce suitable giant garter snake foraging habitat and increase the risk of predation on individual giant garter snakes.” *Id.* at 3.8-69. Yet the Draft concludes that the proposed action would have a less than significant impact on the giant garter snake “because a relatively small proportion (no more than 10.5 percent) of the rice acreage would be affected in any given year and the Environmental Commitments would avoid or reduce many of the potential impacts associated with this activity and the displacement of giant garter snake that could result.” *Id.* at 3.8-70.

¹ We assume that the discussion of the purple martin in the section titled “Yellow-Headed Blackbird” was an error, and that the Draft intended to refer to the yellow-headed blackbird.

The Draft's reliance on the purportedly small amount of rice acreage that would be idled under the proposed action is completely unsupported. The Draft provides no analysis of the population-level impact of a 10.5 percent reduction in habitat. Further, the long-term transfers will occur primarily in dry years, when rice acreage is already substantially reduced. *See id.* at 1-2 (project purpose and need indicating that transfers will occur during dry years); 3.8-69 (acknowledging that planted rice acreage is reduced by drought conditions). The California Rice Commission, for example, has reported that about 140,000 acres of rice, which amounts to 25 percent of last year's crop, went unplanted this year because of water shortfalls.² A 10.5 percent reduction in suitable habitat on top of already reduced rice acreage is substantial, and the Draft cannot assert that such a reduction is insignificant without biological analysis.

This leaves only the environmental commitments to support the no significant impact finding, and these too fail to ensure that significant impacts are avoided. It appears that the giant garter snake-focused environmental commitments were derived from previous Endangered Species Act biological opinions involving water transfers, including the Biological Opinion for Reclamation's 2010-2011 Water Transfer Program. *See* U.S. Fish and Wildlife Service ("FWS"), *Endangered Species Consultation on the Bureau of Reclamation's Proposed Central Valley Project Water Transfer Program for 2010 – 2011* (Mar. 2010) at 5-7 (attached as Exhibit A) (presenting "conservation measures" that are similar to Draft's environmental commitments); *see also* FWS, *Endangered Species Consultation on the Proposed 2009 Drought Water Bank for the State of California* (Apr. 2009) at 7-8 (attached as Exhibit B) (same). The biological opinions incorporated conservation measures that are similar to the Draft's environmental commitments into Reasonable and Prudent Measures, and concluded that compliance with those measures was "necessary and appropriate" to minimize the impact of take caused by the proposed crop idling transfers. Exh. A at 40; Exh. B at 38.

The California Department of Water Resources subsequently reaffirmed that "the conservation measures outlined in the USFWS biological opinion for Reclamation's 2010-2011 Water Transfer Program represent the most current and best scientific information on protective measures for the giant garter snake," and indicated that DWR "will require transfer proponents to incorporate in their transfer proposals those conservation measures from the biological opinion relevant to crop idling." California Department of Water Resources, *DRAFT Technical Information for Preparing Water Transfer Proposals* (Oct. 2013) at 22-23, available at http://www.water.ca.gov/watertransfers/docs/DTIWT_2014_Final_Draft.pdf.

The Draft's environmental commitments, however, are considerably less protective than the conservation measures that FWS and DWR have deemed to be necessary and appropriate, and reflective of the best scientific information available. First, the biological opinions required that the block size of idled rice parcels would be limited to 320 acres with no more than 20 percent of rice fields idled cumulatively (from all sources of fallowing) in each county. They further provided that the idled parcels would not be located on opposite sides of a canal or other waterway, and would not be immediately adjacent to another fallowed parcel. Exh. A at 5-6;

² *See, e.g.*, <http://www.capitalpress.com/California/20141021/rice-growers-wrap-up-drought-diminished-harvest>.

Exh. B at 7. Prior to the 2009 and 2010 biological opinions, FWS had concluded that a 160-acre limitation on the size of idled rice parcels was appropriate. *See FWS, Programmatic Biological Opinion on the Proposed Environmental Water Account Program* (Jan. 2004) at 18 (attached as Exhibit C). Defenders of Wildlife previously submitted comments indicating that increasing the parcel size from 160 to 320 acres would be harmful to giant garter snakes because the size of their home range is 40 and 90 acres, and forcing individuals to travel farther than this range may result in mortality. *See Comments on Addendum to the Environmental Water Account EIR/EIS* (Jan. 2009) (attached as Exhibit D). Yet the current Draft's environmental commitments do not include *any* limitation on the acreage of fallowed parcels, the cumulative percentage of rice fields in any county that can be idled, or the layout of idled parcels relative to each other and to particular habitat features.

5

Second, the biological opinions' conservation measures included a requirement that a field cannot be fallowed more than two irrigation seasons in a row. Exh. A at 6; Exh. B at 7. Again, this important conservation measure is entirely missing from the Draft's environmental commitments.

6

Third, the biological opinions required that the water seller maintain a depth of at least two feet of water in the major irrigation and drainage canals to provide a movement corridor for giant garter snakes. Exh. A at 6; Exh. B at 7. The Draft, on the other hand, provides that "[c]anal water depths should be similar to years when transfers do not occur or, where information on existing water depths is limited, at least two feet of water will be considered sufficient." Draft EIS/EIR at 2-29. The biological opinions' clear requirement of two feet of water is easier to monitor and enforce, and more protective of the giant garter snake.

7

Finally, the prior biological opinions all prohibited transfers from certain sensitive areas, including the Natomas Basin. Exh. A at 6; Exh. B at 7-8; Exh. C at 18. As discussed in Section I.A.4, below, the Draft does not make clear whether all transfers from areas with known priority giant garter snake populations will be prohibited. Such a prohibition is essential to protecting the threatened giant garter snake.

8

The Draft fails to justify its departure from these conservation practices that FWS and DWR have previously deemed to be the minimum requirements necessary and appropriate for protecting sensitive giant garter snake populations from crop idling transfers. Yet it inexplicably concludes that the environmental commitments would avoid or reduce to insignificant levels the proposed action's impacts on giant garter snakes. The Draft's departure from conservation measures that have been widely accepted as necessary to protect the giant garter snake undermines its no significant impact conclusion, and further mitigation is required. At a minimum, the environmental commitments must include all of the giant garter snake protections that were included in the 2009 and 2010 biological opinions. Further, we continue to believe that the 320-acre parcel-size limitation is not biologically justified and is insufficiently protective of the giant garter snake, and that a 160-acre limitation is warranted.

9

2. The Environmental Commitments Do Not Protect Birds from Impacts Caused by Crop Idling Transfers Involving Rice Fields

In addition to the giant garter snake, crop idling transfers involving seasonally flooded agricultural lands (i.e., rice) would affect waterfowl, shorebirds, waterbirds, and riparian songbird that rely on the fields for forage and nesting habitat. The Draft explains that “[s]easonally flooded agriculture, specifically rice fields, and its associated uplands, drainage ditches, irrigation canals, and dikes, provide potentially suitable habitat for . . . a variety of water birds including, but not limited to egrets, herons, ducks, and geese.” Draft EIS/EIR at 3.8-34. It also indicates that rice fields provide habitat and forage for special status bird species, including the greater sandhill crane, black tern, purple martin, tricolored blackbird, white-faced ibis, yellow-headed blackbird, and long-billed curlew. *Id.* at 3.8-25 to 3.8-30; 3.8-74. The Draft acknowledges that crop idling transfers will impact these species by reducing available forage and nesting habitat. *Id.* at 3.8-74 to 3.8-80.

These impacts are likely to be significant. The Draft indicates that the 51,473 acres of rice that could be idled in any year is equivalent to 10.5 percent of the average amount of land in rice production from 1992 to 2012. *Id.* at 3.8-69. The water transfers will occur in dry years, however, when planted rice acreage, other agricultural habitat, and wildlife refuge habitat are already greatly reduced. Thus, the crop idling transfers, in combination with other dry-year habitat reductions, will likely cause only a small fraction of the food and habitat necessary to sustain the special status bird species and other migratory birds to be available at critical times during the year.

The Draft concludes, however, that the proposed action would have a less than significant impact on special status bird species because there would be a less than significant impact on the habitats that support these species. *Id.* at 3.8-80. The impacts to seasonally flooded agricultural habitats, it concludes, would not be significant because of implementation of the environmental commitments. *Id.* at 3.8-65.³ There is only one environmental commitment, however, that is specifically designed to protect birds. It states that, “[i]n order to limit reduction in the amount of over-winter forage for migratory birds, including greater sandhill crane, cropland idling transfers will be minimized near known wintering areas in the Butte Sink.” *Id.* at 2-30.

Clearly, this one environmental commitment that is geographically limited to the Butte Sink is insufficient to mitigate impacts from the idling of rice fields throughout the Sellers’ service area because simply limiting habitat loss in one area does not ameliorate the impacts from habitat destruction elsewhere. Further, as discussed in Section I.A.4, the bird-focused commitment is so vague that it would provide little concrete protection for over-wintering birds in the Butte Sink.

³ As discussed *infra*, Section I.B, the Draft cannot rely on the availability of other suitable habitat to show that the proposed action will not have a significant impact because the Draft provides no analysis of the adequacy or availability of such habitat.

To the extent the Draft relies on the environmental commitments that are focused on protecting the giant garter snake, these commitments are inadequate to reduce impacts to bird species to insignificant levels. The giant garter snake commitments focus on habitat that is particularly important for that species, including major irrigation and drainage canals, smaller drains and conveyance infrastructure, and areas with known priority giant garter snake populations. While birds would receive some benefit from these protections, the commitments only reduce impacts to a very small percentage of the important bird habitat that will be lost as a result of the crop idling transfers.

Thus, the Draft's conclusion that impacts to special status bird species will be insignificant because of implementation of the environmental commitments does not withstand scrutiny. The one bird-focused commitment is inadequate, and the giant garter snake protections only address a very small percentage of the important bird habitat that will be impacted by crop idling transfers. Because the proposed action will result in significant impacts to special status bird species, and the environmental commitments are insufficient to ameliorate these impacts, additional mitigation is required.

First, we suggest including an environmental commitment that requires landowners on idled rice fields to cultivate or retain nonirrigated cover crops or natural vegetation to provide habitat and forage. Such a commitment would be in keeping with California Water Code section 1018, which provides that, "[w]hen agricultural lands are being idled in order to provide water for transfer . . . , landowners shall be encouraged to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat, provided that all other water transfer requirements are met." A report issued by California Waterfowl suggests that vetch and other cover crops can provide valuable habitat for birds, helping to mitigate impacts from idled rice fields. See California Waterfowl, *Rice-Cover Crop Rotation Pilot Project* (Feb. 2013) (attached as Exhibit E).

Second, we suggest including an environmental commitment that requires Reclamation to deliver a specific amount, such as 10 percent, of the water transferred in any crop idling transfer to south of Delta wildlife refuges that provide habitat for birds and other species that are impacted by the transfers. This environmental commitment would help to partially offset the habitat loss and refuge impacts caused by the proposed crop idling transfers.⁴

Third, we recommend including an environmental commitment that prohibits crop idling transfers on fields that are within 2 kilometers of wetlands and refuges, riparian corridors, and known Sandhill crane roost sites. This commitment is important because landscape context, particularly the amount and proximity of flooded wetland habitat, has been shown to be important to predicting shorebird abundance in wetland-agriculture mosaics.⁵ Landscape context

⁴ The Proposed Action's impacts on south of Delta refuges are discussed in Section III, below.

⁵ See Taft O. W, and Haig S. M. 2006. *Landscape context mediates influence of local food abundance on wetland use by wintering shorebirds in an agricultural valley*. Biological Conservation 128: 298–307; Elphick, C. S. 2008. *Landscape effects on waterbird densities in*

is also important for other waterbirds—the vast majority of heron and egret nesting colonies in the Sacramento Valley are in riparian stands along the major rivers and streams,⁶ and these birds must fly out to irrigated agricultural fields (mainly rice, also alfalfa, irrigated pasture, wetlands) to forage for themselves and to bring back food to nestlings. Additionally, wintering Sandhill cranes in the Central Valley forage mainly within 2 km of nighttime roost sites with suitable water depths and isolation from disturbance.⁷ Restricting crop idling transfers near wetlands and refuges, riparian corridors, and known Sandhill crane roost sites will help to minimize the proposed action’s impacts on important bird species.⁸

3. The Environmental Commitments Do Not Protect Birds from Impacts Caused by Crop Idling Transfers Involving Upland Crops

The proposed action also includes idling of up to 8,500 acres of upland crops, including idling of between 16 and 20 percent of existing corn acreage, depending on the county. Draft EIS/EIR at 3.8-63. In Sutter and Solano Counties, idling of upland crops could result in a 9 percent loss in residual feed. *Id.* According to the Draft, some upland crops, such as corn and wheat, are “highly beneficial to wildlife” (*id.* at 3.8-33), and several special status bird species, including greater sandhill cranes, long-billed curlews, and tricolored blackbirds rely on upland crops for forage and habitat. *Id.* at 3.8-25, 3.8-28, 3.8-29, 3.8-74. The Draft acknowledges that transfers involving the idling of upland crops could affect these species (*see, e.g., id.* at 3.8-74 to 3.8-77), and the impacts to these birds could be significant. As discussed above, the water transfers will occur in dry years, when other habitat is already substantially reduced. The food-supply reduction caused by the crop idling transfers, in combination with other reductions known to occur in dry years, could cause food shortages for special status bird species and other migratory birds that depend upon Central Valley habitats.

The Draft concludes, however, that “[b]ecause of the limited amount of upland crop acreage that would be idled under this alternative, and in conjunction with the environmental commitments described in Section 2.3.2.4, and because this is within the historic range of variation for the individual crops, cropland idling/shifting in the Seller Service Area is not

California rice fields: Taxonomic differences, scale-dependence, and conservation implications. Waterbirds 31:62–69.

⁶ Shuford, W. D. 2014. *Patterns of distribution and abundance of breeding colonial waterbirds in the interior of California, 2009–2012.* A report of Point Blue Conservation Science to California Department of Fish and Wildlife and U.S. Fish and Wildlife Service (Region 8). Available at www.fws.gov/mountain-prairie/species/birds/western_colonial.

⁷ Ivey, G. L., B. D. Dugger, C. P. Herziger, M. L. Casazza, and J. P. Fleskes. 2011. *Sandhill Crane Use of Agricultural Lands in the Sacramento–San Joaquin Delta.* Final Report Submitted to the California Bay-Delta Authority.

⁸ Implementation details for these and other proposed environmental commitments must be developed before they can be integrated into a final EIS/EIR. Allowing time for another round of comments on a revised draft document will help to ensure that all of the environmental commitments are clear and enforceable.

expected to significantly impact wildlife species dependent on upland cropland habitat.” *Id.* at 3.8-63 to 3.8-64.

This conclusion does not withstand scrutiny. First, the Draft provides no analysis to support the conclusion that the elimination of 8,500 acres of upland crop habitat will not have a significant impact, and as discussed above, the impact could be profound. Further, the assertion that the idling is not problematic because it is within the historic range of variation for individual crops misses the point—the crop idling transfers will occur during dry years, when planted acreage is already reduced. The idled acreage will be additive to the reductions that have historically occurred in dry years, and will likely be cumulatively substantial. As discussed in Section I.B, below, the Draft’s conclusory statements that impacts to birds will not be significant because there is sufficient alternative habitat and forage available are legally inadequate because they are unsupported by any analysis.

The Draft’s reliance on the environmental commitments is also misplaced. The one bird-focused commitment is geographically limited and unacceptably vague, and the protections for giant garter snakes are not relevant to upland crops, as giant garter snakes only exist in flooded agricultural habitats. The Draft’s conclusion that crop idling transfers involving upland crops won’t have significant impacts on special status bird species is unsupported, and in light of the evidence that impacts to these species will be significant, additional mitigation is required.

As discussed with respect to water transfers involving the idling of rice fields, we recommend including an environmental commitment that requires landowners with idled upland crops to cultivate or retain nonirrigated cover crops or natural vegetation in conformity with Water Code section 1018. We also recommend addition of an environmental commitment requiring Reclamation to deliver a specific percentage of the water made available from any crop idling transfer to south of Delta refuges. Additionally, we suggest including a commitment that prohibits crop idling transfers on fields that are within 2 kilometers of wetlands and refuges, riparian corridors, and known Sandhill crane roost sites.

We also recommend addition of a few environmental commitments that are specifically focused on upland crop habitat. Specifically, we suggest including a commitment that prohibits the idling of corn, winter wheat/triticale, or other grain crops that are particularly important to cranes and waterfowl. If water transfers involving the idling of these crops are not prohibited, we suggest including two additional commitments. First, the idling of corn, winter wheat/triticale, and other grain crops should be restricted to regions where there is a limited extent of such crops overall, and to areas with little or no current or historical use by greater sandhill cranes. Second, we suggest including an environmental commitment that limits transfers involving the idling of corn to areas where this crop is traditionally not flooded after harvest, as flooded corn supports a greater variety of bird species than does dry corn.⁹

⁹ Shuford, W. D., M. E. Reiter, K. M. Strum, C. J. Gregory, M. M. Gilbert, and C. M. Hickey. 2013. *The effects of crop treatments on migrating and wintering waterbirds at Staten Island, 2010–2012*. Final Report to The Nature Conservancy, 190 Cohasset Road, Suite 177, Chico, CA 95926.

4. The Environmental Commitments are Unacceptably Vague and No Enforcement Mechanism is Apparent

According to Reclamation's NEPA Handbook, "[e]nvironmental commitments are written statements of intent made by Reclamation to monitor and mitigate for potential adverse environmental impacts of an action." U.S. Bureau of Reclamation, *Reclamation's NEPA Handbook* (Feb. 2012) at 3-15, available at http://www.usbr.gov/nepa/docs/NEPA_Handbook2012.pdf. Reclamation is required to allocate funds necessary to carry out the commitments, monitor and evaluate the commitments' effectiveness, and document results. *Id.* at 3-16. Additionally, while implementation can be delegated to a third party as a permit condition, compliance with the environmental commitments remains Reclamation's responsibility. *Id.* The Handbook provides details regarding creation of an environmental commitments program, plan, and checklist to ensure the environmental commitments are appropriately implemented. *Id.* at 9-5 to 9-6.

Further, though they are integrated into description of the proposed action, the environmental commitments effectively operate as mitigation measures. CEQA requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Cal. Pub. Res. Code § 21081.6(b). This requirement helps to ensure that "mitigation measures will actually be implemented . . . , and not merely adopted and then neglected or disregarded." *Cal. Clean Energy Comm*, 225 Cal. App. 4th at 189.

The Draft, however, does not appear to require that the environmental commitments be integrated as permit conditions, and does not make clear how Reclamation will enforce the commitments. The Draft merely provides that "Reclamation will have access to the land to verify how the water transfer is being made available and to verify that actions to protect the giant garter snake are being implemented," but does not explain how Reclamation will ensure compliance. Draft EIS/EIR at 2-29.

To adhere to Reclamation's NEPA Handbook and CEQA, and to ensure that the environmental commitments are enforced, we recommend that the environmental commitments be incorporated into the terms of contracts governing the water transfers. This approach has been used before—for example, the 2009 Biological Assessment for the Drought Water Bank provided that conservation measures for the giant garter snake "will be incorporated into contracts between DWR and the water seller." *2009 Drought Water Bank Biological Assessment* (attached as Exhibit F) at 11. The Biological Assessment elaborated that the contracts would include provisions allowing DWR to access the fallowed parcels to make sure the conservation measures were being implemented. *Id.* Incorporating similar terms into the contracts governing the long-term water transfers would help to ensure that the environmental commitments are more than empty promises.

Additionally, the environmental commitments are so vague that enforcement will be impossible, and any potential benefits are likely illusory. First, the bird-focused commitment provides that "cropland idling transfers will be minimized near known wintering areas in the

15

16

Butte Sink,” but it fails to define “minimized” and does not indicate how “known wintering areas” will be identified. Draft EIS/EIR at 2-30. Additionally, it does not specify what entity will oversee the proposed action to ensure that transfers near known wintering habitat are minimized. Unless additional clarity is provided, it will be impossible to effectively implement and enforce this commitment.

16

The commitments that focus on the giant garter snake are also so vague that implementation will be impossible. For example, one commitment provides that “[d]istricts proposing water transfers made available from idled rice fields will ensure that adequate water is available for priority habitat with a high likelihood of giant garter snake occurrence.” *Id.* The term “adequate water” is not defined, and the following commitment indicates that crop idling transfers *will* be permitted in priority habitat. *Id.* This suggests that a landowner could receive credit for transferring water out of priority habitat while still maintaining adequate water for giant garter snakes. This would likely be impossible because removing water from their habitat exposes giant garter snakes to displacement and the associated risks of predation and reduced food availability. *See id.* at 3.8-70.

17

Additionally, the environmental commitment regarding areas with known priority giant garter snake populations is ambiguous. It provides that:

Areas with known priority giant garter snake populations will not be permitted to participate in cropland idling/shifting transfers. Water sellers can request a case-by-case evaluation of whether a specific field would be precluded from participating in long-term water transfers. These areas include lands adjacent to naturalized lands and refuges and corridors between these areas, such as:

- Fields abutting or immediately adjacent to Little Butte Creek between Llano Seco and Upper Butte Basin Wildlife Area, Butte Creek between Upper Butte Basin and Gray Lodge Wildlife areas, Colusa Basin drainage canal between Delevan and Colusa National Wildlife Refuges, Gilsizer Slough, Colusa Drainage Canal, the land side of the Toe Drain along the Sutter Bypass, Willow Slough and Willow Slough Bypass in Yolo County, Hunters and Logan Creeks between Sacramento and Delevan National Wildlife Refuges; and
- Lands in the Natomas Basin.

18

Id. at 2-30. It is not clear from the text whether the areas that are specifically listed will be categorically excluded from participating in transfers, or whether landowners within these areas will be able to request a case-by-case determination regarding particular fields. As discussed above, if the latter is the intended interpretation, this is a major departure from the conservation measures included in recent giant garter snake biological opinions. Further, merely permitting landowners to request a parcel-specific evaluation is inadequate—what will be the consequence if a water seller chooses not to request such an evaluation?

Because the vague and unenforceable nature of the environmental commitments will render their benefits illusory, significant impacts will remain from crop idling transfers. The environmental commitments are legally inadequate and must be rewritten so that they are clear, protective, and enforceable, or alternative mitigation measures must be provided.

19

B. The Draft Makes Unsupported Assumptions Regarding the Availability of Alternative Habitat and Forage for Birds, Undermining its Conclusion that Impacts from Crop Idling Transfers Will Be Insignificant

To comply with CEQA, “[a] legally adequate EIR must produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 733 (1990) (quotation marks and citation omitted). “A conclusory statement unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind not only fails to crystallize issues but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.” *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, 411 (1979) (quotation marks and citations omitted). Similarly, one of NEPA’s primary purposes is “to guarantee relevant information is available to the public.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1072 (9th Cir. 2011); *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (“Where the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA.” (quotation marks and citation omitted)).

20

The Draft’s analysis of impacts to birds from crop idling transfers falls far short of these standards. In particular, the Draft relies upon entirely unsubstantiated assertions regarding the availability of alternative forage and habitat to support its conclusion that the proposed action will have a less than significant impact on birds. For example, with respect to rice fallowing, it states that “[t]he decision to idle or shift a field would be made early in the year. So for species that migrate into the area seasonally (mainly birds), those arriving in the spring would not be impacted as they would select suitable habitat upon their arrival.” Draft EIS/EIR at 3.8-65. The Draft contains no analysis, however, to show that adequate suitable habitat would be available in all water year types. Similarly, for upland crops, it asserts that “[i]dling would reduce forage areas, but species would respond by looking for forage in other habitats. The bird species that would be potentially affected by idling of upland crops would be capable of dispersing to other areas or other non-idled parcels.” *Id.* at 3.8-63. Again, there is no analysis to show that adequate alternative food supplies exist. With respect to impacts to special status bird species, the Draft asserts that “[t]hese species are highly mobile and could easily relocate to other suitable habitats that would continue to exist in the surrounding areas.” *Id.* at 3.8-80; *see also id.* at 3.8-75, 3.8-78. The Draft is devoid of information regarding the availability of alternative suitable habitat in the surrounding areas.

The Draft’s assumption that adequate alternative forage and habitat exist ignores the context in which the transfers will occur. Importantly, the Draft fails to account for the fact that

21

water transfers will occur in dry years, when suitable habitat is least likely to be available. For example, during this drought year, 25 percent fewer acres of rice were planted in the Sacramento Valley than were planted the previous year. Additionally, water deliveries to federal, state, and privately managed wildlife refuges were substantially curtailed. The Draft also indicates that State Water Project crop idling transfers will likely occur at the same time as the long-term transfers, further reducing available habitat. *Id.* at 3.9-46 (“Cropland idling implemented under the SWP transfers could result in a maximum of 26,342 acres of idled rice land.”).

Moreover, existing evidence suggests that the Draft’s assumption that adequate alternative habitat will be available may be incorrect. For example, Ducks Unlimited used the bioenergetic model TRUOMET to evaluate the impact of California’s drought on waterfowl in the Central Valley. *See* Dr. Mark Petrie, Ducks Unlimited, Inc., *California’s Drought and Potential Impacts on Waterfowl* (May 2014) (attached as Exhibit G). The modeling showed that, under severe drought conditions, dabbling duck food supplies would be exhausted by early December, before bird numbers traditionally peak in the Valley, and dark geese and white geese food supplies would be exhausted by early February and late January, respectively. *Id.* at 10.

The impacts to birds from habitat reductions caused by the long-term transfers in dry years when habitat is already reduced could be profound. For example, a reduction of food availability would send birds back to their spring breeding grounds in poor condition, which would greatly reduce breeding success. In addition, the significant reduction in waterfowl habitat would cause overcrowding, which has in the past exacerbated outbreaks of avian diseases such as cholera and botulism. Such conditions could affect waterfowl populations for years to come.

Because the Draft’s conclusory statements regarding alternative bird habitat are “unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind,” they fail to comply with applicable law and additional analysis is required. *See Whitman*, 88 Cal. App. 3d at 411. We suggest that, at a minimum, a revised draft EIS/EIR should include bioenergetics modeling to assess the impact that crop idling transfers will have on available food supplies in various water year types and in light of other reductions in available habitat. TRUOMET modeling was conducted for the Bay Delta Conservation Plan (“BDCP”) environmental documents, and such modeling would be appropriate here. *See, e.g.,* BDCP Draft EIS/EIR at 12-729; 12-2559.¹⁰

II. The Draft Improperly Fails to Analyze Impacts to Waterfowl and Shorebirds

Though the proposed action would likely have substantial impacts on waterfowl and shorebirds, the Draft entirely fails to discuss or analyze impacts to these species.¹¹ Such an

¹⁰ All chapters from the BDCP Draft EIS/EIR that are cited in this letter are available at <http://baydeltaconservationplan.com/PublicReview/PublicReviewDraftEIR-EIS.aspx>.

¹¹ The Draft does, however, acknowledge that waterfowl and shorebirds rely on seasonally flooded agricultural habitat. *See, e.g.,* Draft EIS/EIR at 3.8-14 (indicating that post-harvest winter flooding “provides habitat for waterfowl and other wildlife,” that invertebrates in flooded

analysis is required by CEQA, which provides that “[a]n EIR shall identify and focus on the significant environmental effects of the proposed project.” 14 Cal. Code Regs. § 15126.2.¹² “[S]ignificant effect on the environment,” in turn, “means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” *Id.* § 15382.

It is clear that crop idling transfers could lead to a substantial adverse change in the condition waterfowl and shorebirds within the project area. For example, modeling of population energy demand and population energy supply for dabbling ducks in the Central Valley shows that reduced winter-flooded rice acreage due to drought causes food demand to exceed supply. *California’s Drought and Potential Impacts on Waterfowl*, Exh. G. When further drought-related habitat reductions are taken into consideration, food demand far exceeds supply for dabbling ducks, and demand also outpaces supply for dark geese and white geese. *Id.* Water transfers involving the idling of seasonally flooded agricultural habitat will occur primarily in dry years when habitat is already reduced, and will further diminish the already-inadequate food supplies available to migratory waterfowl. Shorebirds, which also rely on seasonally flooded agricultural habitat, could be similarly impacted by crop idling transfers. Because impacts to waterfowl and shorebirds are an important part of the significant environmental effects of the proposed action, the Draft must include an analysis of impacts to these species.

The importance and feasibility of this analysis is underscored by the BDCP Draft EIS/EIR, which included substantial assessment of impacts to waterfowl and shorebirds. *See, e.g.*, BDCP Draft EIS/EIR at 12-729 to 12-745. The BDCP environmental document emphasized that “[m]anaged wetlands, tidal natural communities, and cultivated lands (including grain and hay crops, pasture, field crops, rice, and idle lands) provide freshwater nesting, feeding, and resting habitat for a large number of Pacific flyway waterfowl and shorebirds.” *Id.* at 12-729. It recognized that the proposed Plan would modify habitat in a manner that could affect these species, the included substantial analysis to understand the nature and extent of those impacts. *See, e.g., id.* at 12-729 to 12-745. The BDCP Draft EIS/EIR also acknowledged the Central Valley Joint Venture’s conservation goals, and analyzed impacts to waterfowl and shorebirds in light of the Joint Venture’s 2006 Implementation Plan. *Id.* at 12-729 to 12-730. In addition to qualitative discussions of impacts to waterfowl and shorebirds, the BDCP environmental document included analysis from the TRUEMET model to quantify the proposed action’s impacts on waterfowl. *See, e.g., id.* at 12-729.

fields “are particularly important to shorebirds,” and that “[r]ice fields provide pair, brood, and nesting habitat for birds such as mallard duck, northern pintail, and terns”).

¹² NEPA also requires an analysis of the proposed action’s effects on waterfowl and shorebirds, as these impacts are an important part of the environmental consequences of the proposed action. *See Nat’l Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (“Under NEPA, an EIS must contain a ‘reasonably thorough’ discussion of an action’s environmental consequences.” (citing *State of California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982))).

The long-term water transfers would affect the same shorebirds and waterfowl as the proposed BDCP, and there is no valid reason for the Draft's complete exclusion of these species from its impacts analysis. We recommend that a revised draft EIS/EIR include both qualitative and quantitative analysis of the proposed action's impacts on waterfowl and shorebirds.

23

III. The Draft Improperly Ignores South of Delta State Wildlife Areas and Federal Wildlife Refuges

A. The Draft Fails to Analyze Potentially Significant Impacts to South of Delta Refuges

California law requires that an EIR "must include a description of the physical environmental conditions in the vicinity of the project." 14 Cal. Code Regs. § 15125(a). The CEQA Guidelines emphasize that "[k]nowledge of the regional setting is critical to the assessment of environmental impacts," and that "[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." *Id.* § 15125(c). A failure to accurately describe the environmental setting may render an EIR inadequate, *inter alia*, because important environmental impacts from the proposed action are likely to be omitted. *See San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus*, 27 Cal. App. 4th 713, 729 (1994) ("For the reasons set forth above, the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete and misleading; it does not comply with State CEQA Guidelines section 15125. Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the FEIR adequately investigated and discussed the environmental impacts of the . . . project."). Similarly NEPA requires a "full and fair discussion of significant environmental impacts," and a failure to discuss a significant impact can render an EIS legally inadequate. 40 C.F.R. § 1502.1.

24

Here, the Draft is fatally flawed because it fails to include important south of Delta State Wildlife Areas and Federal Wildlife Refuges in its description of the proposed action's environmental setting, and fails to analyze impacts to these important resources. *See* Draft EIS/EIR at 3.8-15 to 3.8-17. This omission is particularly odd because the Draft acknowledges that, within SLDMWA, "[w]ater for habitat management occurs on approximately 120,000 acres of refuge lands, which receive approximately 250,000 to 300,000 acre-feet (AF) per water year." *Id.* at ES-4.

Yet it is clear that the proposed action could have significant impacts on south of Delta refuges. First, the proposed action could result in increased avian overcrowding. Crop idling transfers will reduce available habitat and forage in the Sacramento Valley, placing additional pressure on the already-stressed south of Delta habitats. Overcrowding could reduce breeding success for important bird species, exacerbated outbreaks of diseases such as cholera and botulism, and could affect waterfowl populations for years to come.

Second, the Draft does not clearly discuss the order of priority for use of CVP conveyance facilities. If deliveries to the refuges are not appropriately prioritized, the refuges could be left without adequate water to support migratory bird populations. The Draft states that

25

“[t]ransfers that must be conveyed through the Delta are limited to periods when capacity at C.W. ‘Bill’ Jones Pumping Plant (Jones Pumping Plant) and Harvey O. Banks Pumping plant (Bank Pumping Plant) is available typically from July through September, *and only after Project needs are met.*” *Id.* at 2-18 (emphasis added). The Draft must clarify whether “Project needs” includes *all* deliveries to refuges that are required under the CVPIA. If Level 2 and Level 4 refuge deliveries are not considered “Project needs,” then the Draft must analyze how the proposed action could impact water delivers to the south of Delta refuges, and how any potentially reduced deliveries could impact migratory birds and other species that depend upon the refuges.

25

Third, the proposed action could increase the price of available water, making it impossible for Reclamation to purchase incremental Level 4 refuge supplies. A revised draft EIS/EIR should analyze how the proposed action will impact water prices, and whether price changes will affect Reclamation’s ability to provide full deliveries to the south of Delta refuges.

26

B. The Draft Should Include Transfers to South of Delta Refuges

Because it appears that impacts to south of Delta refuges could be significant, the Draft should include measures to mitigate these impacts. *See* Cal Pub Res. Code § 21081. A first step toward providing this mitigation would be to include transfers to south of Delta refuges in this environmental review. Reclamation needs flexibility to move available water quickly to protect these public trust resources, and including refuge transfers in this EIS/EIR would help to provide this flexibility. In dry years, north-to-south transfers can provide critically important water to south of Delta refuges. For example, this year, Reclamation transferred a portion of the permanent refuge supply that it purchased from the Anderson-Cottonwood Irrigation District from north of Delta refuges that could not physically receive the water, to the Kern National Wildlife Refuge, which is south of the Delta. Including such transfers in the proposed action would streamline approval and reduce transaction costs, allowing Reclamation to expeditiously provide water that is desperately needed for wetland habitat south of the Delta. We hope to see transfers to south of Delta refuges included in the proposed action in a revised draft EIS/EIR.

27

IV. The Draft Fails to Adequately Analyze Impacts to Fish and Wildlife from Groundwater Substitution and Reservoir Release Transfers

A. The Draft Uses Inappropriate Screening Thresholds to Avoid Analyzing Biological Impacts from Flow Reductions

1. The Draft Fails to Analyze Impacts to Fisheries Caused by Flow Reductions

28

The Draft’s analysis of impacts to fisheries from instream flow reductions caused by the proposed action is seriously deficient because the Draft applies an arbitrary, not biologically-based screening threshold to avoid analyzing potentially significant impacts. In particular, the Draft concludes that a reduction in instream flow would only be biologically significant if it involved both a 10 percent change in mean flow by water year type and a minimum change in flow of 1 cfs. Draft EIS/EIR at 3.7-20. These two thresholds were used as an initial screen, and

further analysis to assess biologically significant impacts to fisheries was only conducted if flow reductions were both greater than 10 percent and greater than 1 cfs. *Id.* at 3.7-21.

Based on application of these thresholds, the biological impacts from flow reductions in vast majority of waterways in the Sellers' service area were never assessed. For example, the Draft states:

Under the Proposed Action, mean monthly modeled flows would be reduced by less than ten percent on the Sacramento, Feather, Yuba, and American rivers. Based on the screening level criteria, these flow reductions are not considered substantial. Therefore, the effects of the Proposed Action on fisheries in these rivers would be less than significant.

Id. at 3.7-25. Because the Draft concluded that the impacts would be less significant based on the 10 percent significance threshold, impacts to fisheries on these critically important waterways were not analyzed. Similarly, the screening thresholds were applied to exclude the following waterways from any assessment of biological impacts caused by flow reductions: Deer Creek (in Tehama County), Antelope Creek, Paynes Creek, Elder Creek, Mill Creek (in Tehama County), Thomes Creek, Mill Creek (Thomes Creek tributary), Butte Creek, Auburn Ravine, Freshwater Creek, Colusa Basin Drain, Putah Creek, and Wilson Creek. *Id.*

The Draft does not, and cannot, adequately justify its use of these arbitrary thresholds. The document explains that "[t]he ten percent threshold was used to determine measurable flow changes based on several major legally certified environmental documents in the Central Valley related to fisheries," including the Trinity River Mainstem Fishery Restoration Record of Decision (December 2000), the San Joaquin River Agreement Record of Decision (March 1999), the Freeport Regional Water Project Record of Decision (January 2005), and the Lower Yuba Accord EIR/EIS (October 2007). *Id.* at 3.7-20. Reliance on these old documents is misplaced because they do not reflect the best available scientific information, and because most of the documents were drafted for programs that *increased* flows. The Draft does not include any information regarding the biological significance of these thresholds, such as their relationship to water temperature, available spawning area, or other important factors.

Further, agencies have recently used a more conservative screening threshold to determine the potential significance of flow reductions. For example, the December 2013 Draft EIS/EIR for the proposed BDCP used a 5 percent screening threshold:

Physical modeling outputs each month and water year type were compared for between model scenarios at multiple locations to determine whether there were differences between scenarios at each location. A "difference" was defined as a >5% difference between the pair of model scenarios in at least one water year type in at least 1 month. If a difference was found at a location, subsequent biological modeling and analyses for fish species that occur in that location were conducted and reported for that location. If no differences were found,

28

29

subsequent biological modeling and analyses for fish species that occur in that location were deemed unnecessary and were not conducted.

BDCP Draft EIS/EIR at 11-202. The BDCP draft environmental document does not appear to use the additional 1 cfs threshold. Though the Draft and BDCP analyze impacts from flow reductions on the same rivers, the Draft does not attempt to explain why a less conservative threshold is appropriate for analysis of the proposed action's impacts to fish.

29

Because the Draft's reliance on the 10 percent and 1 cfs screening thresholds is inappropriate, and because impacts to special status fish species on the waterways that were eliminated based on application of the thresholds may be significant, further analysis is required. We recommend that a revised draft EIS/EIR analyze the significance of impacts based only on biological criteria, such as water temperature and changes to habitat quality. Alternatively, if a significance threshold for flow reductions is used, it should be at least as conservative as the 5 percent threshold used in the BDCP Draft EIS/EIR.

2. The Draft Fails to Analyze Impacts to Vegetation and Wildlife from Flow Reductions

The Draft uses the same screening thresholds from the fisheries chapter to determine whether flow reductions will have a significant impact on terrestrial species. Draft EIR/EIS at 3.8-38 ("If the flow reduction caused by implementing the transfer action would be less than one cubic feet per second (cfs) and less than ten percent change in mean flow by water year type, then no further analysis was required, because the effect was considered too small to have a substantial effect on terrestrial species."). The Draft justifies its use of these thresholds based on the same outdated documents it relied on in the fisheries section, even though the fisheries section indicates that those environmental reports were "related to fisheries." *Id.* at 3.8-39, 3.7-20. The use of these thresholds therefore appears to be even more arbitrary with respect to impacts to terrestrial species because the 10 percent threshold was derived from fisheries-related analysis.

30

Based on application of these thresholds, the vast majority of rivers and streams with special status terrestrial species were eliminated from consideration before biological impacts to those species could be analyzed. The following waterways were eliminated from further consideration based on the screening thresholds: Sacramento River, Feather River, Yuba River, American River, Deer Creek (in Tehama County), Antelope Creek, Paynes Creek, Seven Mile Creek, Elder Creek, Mill Creek (in Tehama County), Thomes Creek, Mill Creek (Thomes Creek tributary), Butte Creek, Auburn Ravine, Honcut Creek, Freshwater Creek, Colusa Basin Drain, Upper Sycamore Slough, Funks Creek, Putah Creek, Spring Valley Creek, Walker Creek, North Fork Walker Creek, Wilson Creek, Stone Corral Creek, Little Chico Creek, and the South Fork of Willow Creek. *Id.* at 3.8-49 to 3.8-50.

Because application of the screening threshold was inappropriate, and flow reductions from the proposed action could have a significant impact on special status terrestrial species that rely on the eliminated waterways, further analysis is required.

B. The Draft's Conclusions Regarding Impacts to Fish and Wildlife from Reduced Instream Flows on Specific Rivers are Unsupported

1. The Draft's Conclusions that Important Fish Species Will Not Be Impacted Lack Biological Support

For the rivers in which modeled flow reductions would exceed 10 percent and 1 cfs in any month, the Draft purports to conduct further biological analysis to determine whether the flow reduction would have a significant impact on special status fish species. Draft EIS/EIR at 3.7-21. The presented analysis, however, is entirely qualitative and extremely cursory. Though the lead agencies are familiar with a variety of modeling tools that could have helped to more fully understand the proposed action's impacts on fisheries, no modeling of biological impacts was conducted. The extensive modeling that was used in the BDCP Draft EIS/EIR suggests various tools that could have been used, including SALMOD, the Sacramento Ecological Flows Tool, and the Reclamation Temperature Model. While these and other available models have flaws, they provide important insights into how flow reductions will impact fisheries. The Draft's failure to conduct *any* modeling substantially undermines its conclusions that the proposed action will not result in significant impacts to special status fish species.

31

Further, the Draft's qualitative assessment of biological impacts from flow reductions is of such poor quality that it cannot be considered reliable. For example, for Stony Creek and Coon Creek, the Draft concludes that, because "significant" flow reductions—i.e., greater than 10 percent and 1 cfs—will happen infrequently, the impacts to special status fish species will be less than significant. Draft EIS/EIR at 3.7-28 to 3.7-29. The Draft does not explain, however, why the frequency of a low-flow event is dispositive as to biological impacts, and it is not at all clear that a single occurrence of low flows and high temperatures could not significantly impact sensitive fish populations. Additionally, with respect to Stony Creek, if a 5 percent significance threshold was used instead of a 10 percent threshold, "significant" flow reductions would occur in many more months. *Id.* at 3.8-56 to 3.8-57. For Coon Creek, the Draft doesn't even mention which species could be impacted. *Id.* at 3.7-29.

32

With respect to Little Chico Creek, the Draft appears to conclude that, because the Creek already suffers from low flows, additional flow reductions will not be problematic. *Id.* at 3.7-29. The Draft cannot simply write off the biological impacts from an increased frequency of low flow events without providing any analysis of effects on temperature, habitat suitability and availability, and other important factors.

33

On Cache Creek, the Draft concludes that there will be no impact to Fall-run Chinook salmon because connectivity for migration only exists in wet years, and there are no significant instream flow reductions in wet years. *Id.* at 3.7-28. The significance determination is based on the unsupported 10 percent figure, however, and use of a more conservative threshold would show that a significant flow reduction would occur in October in wet years. *See id.* at 3.8-55.

34

The Draft also appears to erroneously exclude waterways that may contain special status fish species from further biological review. The Draft states that “[n]o field sampling information is available regarding the presence of special-status fish species in the following waterways: Seven Mile Creek, Elder Creek, Spring Valley Creek, North Fork Walker Creek, and Wilson Creek.” *Id.* at 3.7-9. It elaborates that, “[w]ithout further information, it was assumed that these streams could support special-status fish species and, therefore, further biological analyses were conducted in these waterways.” *Id.* In the following paragraph, however, the Draft states that field sampling data and reports indicate that special status fish species are not present in Seven Mile Creek, Spring Valley Creek, North Fork Walker Creek, and Wilson Creek, and accordingly that no further biological analysis was conducted for these waterways. *Id.* A revised draft EIS/EIR should clarify whether there is field sampling information available for these Creeks, and should conduct biological analysis if information regarding the presence of special status fish species is not available.

35

The impacts of the proposed action on fisheries remain unclear because the Draft uses inappropriate screening thresholds, fails to model biological impacts, and includes logically unsound qualitative assessments of biological impacts from admittedly significant flow reductions. To comply with CEQA and NEPA’s legal requirements that an EIS/EIR provide the public with sufficient information to understand the environmental impacts of a proposed project and meaningfully compare alternatives, substantially more analysis is required, including modeling to understand the biological implications of flow reductions.

36

2. The Draft’s Conclusions that Vegetation and Wildlife Will Not Be Impacted Lack Biological Support

Similarly, for terrestrial species, the Draft’s analysis of biological impacts on the few waterways that it analyzes after application of the screening thresholds is unacceptably cursory. For example, for Coon Creek, the Draft concludes that impacts to terrestrial species will not be significant because substantial flow reductions will occur infrequently. Draft EIS/EIR at 3.8-59. The Draft does not present any biological information or analysis to show that the frequency of low-flow events determines the impacts of those events on sensitive species.

37

With respect to Little Chico Creek and Bear River, the Draft seems to conclude that flow reductions will have a less than significant impact on terrestrial species because the flow reductions are likely to occur when water levels are already low. *Id.* at 3.8-59 to 3.8-61. These conclusions are unsupported by data or analysis. Further, it seems that flow reductions could have a particularly profound impact during dry years or periods when streamflow is already low, as every drop of available water would be critical for riparian ecosystems. Further analysis that actually describes the anticipated impacts to the terrestrial species that rely on these waterways is required.

38

Finally, for Cache Creek and Stony Creek, the Draft concludes that flow reductions could have a significant impact on the riparian natural communities associated with these streams. *Id.* at 3.8-52 to 3.8-53, 3.8-58. These impacts would be reduced to less-than-significant levels, the Draft concludes, through implementation of the groundwater mitigation measure. *Id.* As

39

discussed in the next section, however, the groundwater mitigation measure is insufficiently protective, and significant impacts will remain after its implementation.

C. The Mitigation Measure for Potentially Significant Impacts from Groundwater Substitution Transfers is Inadequate

In several instances, the Draft relies on Mitigation Measure GW-1 (*see* Draft EIS/EIR at 3.3-88 to 3.3-91) to conclude that otherwise significant impacts will be reduced to less-than-significant levels. For example, it relies on the groundwater mitigation measure to avoid significant impact to natural communities along Cache Creek and Stony Creek (*id.* at 3.8-52 to 3.8-53, 3.8-58), and to ameliorate potentially significant impacts to fish and terrestrial species associated with small streams for which no historical flow data are available (*id.* at 3.7-26, 3.8-51). Similarly, the Draft concludes that the groundwater mitigation measure would help to eliminate the possibility of cumulatively significant impacts to fisheries. *Id.* at 3.7-56. With respect to impacts to vegetation and wildlife, the Draft generally concludes that the “Environmental Commitments described in Section 2.3.2.4 and Mitigation Measure GW-1 described in Section 3.3 would eliminate or reduce the potentially substantial effects of water transfer actions.” *Id.* at 3.8-90.

Mitigation Measure GW-1 requires potential sellers to comply with a specific set of monitoring provisions, and to create and implement a mitigation plan. *Id.* at 3.3-88 to 3.3-91. “The purpose of Mitigation Measure GW-1 is to monitor groundwater levels during transfers to avoid potential effects. If any effects occur despite the monitoring efforts, the mitigation plan will describe how to address those effects.” *Id.* at 3.3-91. The monitoring requirements include measurement of well discharge rates and volumes, groundwater-level measurements, and assessments of land subsidence. *Id.* at 3.3-88 to 3.3-89. The Draft requires that a mitigation plan include “[d]evelopment of mitigation options,” and suggests particular actions, including curtailment of pumping, reimbursement for increased pumping costs, and reimbursement for expenses caused by infrastructure damage from land subsidence. *Id.* at 3.3-90 to 3.3-91.

There are no specific actions, however, to address significant impacts to fisheries and riparian communities that could result from streamflow depletions associated with groundwater substitution transfers. This is problematic because, as discussed above, the Draft recognizes that groundwater substitution transfers could cause significant impacts to fish and terrestrial species, and relies on Mitigation Measure GW-1 to reduce these impacts to less-than-significant levels. By relying on not-yet-created plans to mitigate impacts to fish and wildlife, without demonstrating how these impacts can be mitigated, the Draft violates CEQA’s prohibition on deferred mitigation. *See, e.g., City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 915-16 (2009) (“Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”).¹³

¹³ The environmental commitment focused on groundwater substitution transfers does not fix this problem because it merely requires that mitigation plans address impacts to water resources

To remedy this problem, a revised draft EIS/EIR should include particular actions that sellers can take to mitigate significant impacts to fisheries, vegetation, and wildlife caused by groundwater substitution transfers. For example, the revised draft could include a mitigation action requiring a seller who is responsible for a flow reduction that significantly impacts fish and wildlife to curtail pumping and dedicate a portion of his surface water supply to flows for fish and wildlife until the waterway is no longer impacted by the seller's transfer-related groundwater pumping.

41

V. The Draft Fails to Analyze Impacts to Wildlife from Increased Irrigation of Drainage-Impaired Lands in the Buyers' Service Area

The Draft also fails to adequately analyze impacts to water quality and wildlife that could occur in the Buyers' service area as a result of increased irrigation of drainage-impaired lands. It is well known that substantial acreage within SLDMWA is compromised by the accumulation of selenium-laden drainage water in the shallow groundwater table. For example, as of 2006, there were approximately 298,000 acres of drainage-impaired lands within Westlands Water District. U.S. Bureau of Reclamation, *San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement* (May 2006) at ES-15, available at http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=61. The Draft acknowledges that increased irrigation of lands with contaminated drainage water could impact surface waters in the region because "increased irrigation could cause water to accumulate in the shallow root zone and could leach pollutants into the groundwater and potentially drain into the neighboring surface water bodies." Draft EIS/EIR at 3.2-41. As is clear from the experience at Kesterson Reservoir, drainage-water discharges to surface waters can have profound impacts on wildlife, including sensitive migratory birds.

42

The Draft, however, concludes that increased irrigation of drainage-impaired lands will not be a problem because the proposed action would be implemented in dry years, so "most water would be applied to permanent crops or crops planted on prime or important farmlands," and "farmers would continue to leave marginal land and drainage impaired lands out of production and use water provided by the Proposed Action for more productive lands." *Id.* But this statement is contradicted elsewhere in the Draft. For example, the chapter on agricultural land use states that the proposed action would "increase water supplies and potentially allow growers to place previously idled land into production." *Id.* at 3.9-48. Additionally, the Draft indicates that the Exchange Contractors could sell up to 150,000 acre feet, and that "both projects could sell their water to the same buyers." *Id.* at 3.8-93. It clearly remains possible that the proposed action would result in increased irrigation of drainage-impaired lands.

The Draft also suggests that any drainage created by the proposed action would not be problematic "given drainage management, water conservation actions and existing regulatory compliance efforts already implemented in that area." *Id.* at 3.2-41. Yet the status of drainage

43

needed for special status species protection, but does not provide any guidance as to how the impacts can be mitigated. See Draft EIS/EIR at 2-29.

management in the region remains unclear. Reclamation is in the process of finalizing a settlement agreement with Westlands that would shift responsibility for providing drainage services from the federal government to the district. See *Principles of Agreement for a Proposed Settlement Between the United States and Westlands Water District Regarding Drainage* (Dec. 2013) (attached as Exh. H). Though the draft settlement agreement has not been made public, the attached Principles of Agreement suggest that the deal may not include important safeguards such as performance standards, monitoring requirements, federal oversight, and enforcement mechanisms to ensure that any drainage-water discharges are properly managed. Further, the Principles of Agreement indicate that the settlement will only require Westlands to retire 100,000 acres, leaving almost 200,000 acres of drainage-impaired land within the district eligible for irrigation. In light of the major deficiencies in the pending settlement, the Draft cannot rely on “existing regulatory compliance efforts” to avoid addressing the drainage-related impacts that the proposed action could cause.

43

Because the proposed action could lead to increased irrigation of drainage impaired lands in Westlands and other districts, causing potential impacts to birds and other wildlife, and because it is uncertain whether there will be an effective drainage management plan in place, a revised draft EIS/EIR should include a quantitative analysis of potential environmental impacts from this increased irrigation, including water quality impacts to surface waters in the Buyers’ service area, as well as an assessment of potential impacts to migratory birds and other wildlife.

VI. The Draft Fails to Analyze an Adequate Range of Alternatives

Both CEQA and NEPA require consideration of a reasonable range of alternative actions that might achieve similar goals with less environmental impact. Cal. Pub. Res. Code §§ 21002, 21061, 21100; 14 Cal. Code Regs. § 15126.6; 42 U.S.C. § 4332; 40 C.F.R. §§ 1502.14, 1508.25(b). “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Natural Res. Def. Council*, 421 F.3d at 813 (quotation marks and citation omitted). Further, CEQA is designed to prevent public agencies from approving projects if feasible alternatives or mitigation measures would substantially lessen the significant environmental effects. Cal. Pub. Res. Code § 21002.

Here, the Draft has failed to analyze an alternative that could achieve the project purpose with a less substantial environmental impact. The Draft analyzes four alternatives: (1) no action/no project; (2) full range of transfers (proposed action); (3) no cropland modifications; and (4) no groundwater substitution. Draft EIS/EIR at 2-6. While the two action alternatives other than the proposed alternative restrict the available methods of transfer, the Draft does not consider any action alternative that restricts the *quantity* of water that may be transferred. Cropland modification transfers and groundwater substitution transfers affect environmental resources differently, and the alternatives that exclude one or the other method reduce some, but not all, impacts associated with the proposed action. An alternative that reduces the amount of water that could be transferred, for example to 50 percent of the amount included in the proposed action, for both cropland modification transfers and groundwater substitution transfers would reduce almost all of the environmental impacts caused by the proposed action to some extent. Because such an alternative would still meet the project’s objectives, and would substantially

44

reduce environmental impacts, it should be included and fully analyzed as an alternative in a revised draft EIS/EIR.

44

VII. The Draft Fails to Account for Climate Change Impacts

It is well accepted that changes to California's temperature and precipitation regime will occur in the future, and these changes will affect nearly all aspects of the CVP system. Further, the Draft acknowledges that, among other impacts, "[c]limate change will continue to affect natural ecosystems, including changes to biodiversity, location of species and the capacity of ecosystems to moderate the consequences of climate disturbances such as droughts. In particular, species and habitats that are already facing challenges will be the most impacted by climate change." Draft EIS/EIR at 3.6-13 (citations omitted).

Though it recognizes that climate change impacts are occurring now, the Draft concludes that climate change will not significantly impact the proposed action because of the action's ten-year timeframe: "Because of the short-term duration of the Proposed Action (10 years), any effects of climate change on this alternative are expected to be minimal. Impacts to the Proposed Action from climate change would be less than significant." *Id.* at 3.6-21 to 3.6-22. Similarly, in its analysis of impacts to fisheries, the Draft concludes that climate change will not alter conditions in reservoirs, rivers and creeks, or the Delta because there will be limited climate change predicted over the project's ten year duration. *Id.* at 3.7-23 to 3.7-24. Beyond these conclusory statements, the Draft includes no modeling or analysis to show the proposed action's impacts in light of expected climate change.

45

The Draft's approach to climate change is a substantial departure from recently produced environmental documents in which climate change is incorporated into the operational modeling for the project. For example, Reclamation incorporated climate change into the modeling and assessment of environmental impacts for the BDCP's draft environmental documents. *See, e.g.,* BDCP Draft EIS/EIR at 4-6, 5-47 to 5-49, and Appendix 3E. In the BDCP Draft EIS/EIR, the "CALSIM model was used to simulate how projected changes in runoff (i.e., reservoir inflows) for two future climate periods, 2025 and 2060 conditions, would affect existing reservoir operations and Delta inflows in the project area." *Id.* at Appendix 29B-1. Importantly, the above quote reflects that the BDCP Draft EIS/EIR included climate changes impacts in its operational model for 2025—only one year after the time period covered by the proposed action. The proposed BDCP and the proposed action have overlapping action areas and operational considerations, and BDCP's modeling of climate change impacts in 2025 undermines the Draft's position that climate change impacts within a ten year time frame will be inconsequential.

Because the Draft's analysis and operational modeling does not reflect likely operations in the future with climate change, the Draft's assessment of potential environmental impacts fails to accurately assess the impacts of the proposed action in light of climate change. This approach is not consistent with CEQA or NEPA, and the operational modeling must be revised to incorporate climate change in order to accurately assess potential environmental impacts.

VIII. The Draft Fails to Adequately Assess Cumulative Impacts

The Draft fails to adequately consider cumulative impacts because it fails to include an assessment of potentially cumulative projects. Initial comments on the proposed action that the Glenn-Colusa Irrigation District ("GCID") submitted to Reclamation on October 14, 2014 illustrate the problem. GCID's letter describes its Groundwater Supplemental Supply Program, through which it is proposing to install and operate five new groundwater production wells and operate an additional five existing wells for use within GCID during dry and critically dry water years. The letter indicates that the wells would have a production capacity of approximately 2,500 gallons per minute, and would operate during dry and critically dry water years for a cumulative total annual pumping volume of up to 28,500 acre feet. The letter indicates that pumping under the Groundwater Supplemental Supply Program would likely occur in the same years as the long-term transfers that the Draft analyzes. Yet the Draft does not include GCID's Program in its analysis of cumulative impacts to groundwater resources. *See* Draft EIS/EIR at 3.3-91 to 3.3-92. The cumulative impacts caused by groundwater substitution transfers covered by the proposed action and groundwater pumping under GCID's new program could be significant, and further analysis is required. More generally, GCID's letter suggests that the Draft's authors did not adequately survey the proposed action's potential sellers to understand their future operations, raising questions about other likely projects that have been excluded from the Draft's cumulative impacts analysis.

46

Thank you for consideration of our views. Please feel free to contact me at your convenience if you have any questions or concerns.

Sincerely,



Rachel Zwillinger
Water Policy Advisor
Defenders of Wildlife
rzwillinger@defenders.org
415-686-2233

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Monday, December 01, 2014 8:20 PM
To: Frances Mizuno; Buckman, Carolyn; Veronese, Gina
Subject: Fwd: Long-Term Water Transfers Draft EIR/EIS

Email comment.

----- Forwarded message -----

From: Joni Clark Stellar <clarkstellar@gmail.com>
Date: Mon, Dec 1, 2014 at 5:53 PM
Subject: Long-Term Water Transfers Draft EIR/EIS
To: bhubbard@usbr.gov

Mr. Brad Hubbard
 Long-Term Water Transfers Draft EIR/EIS
 2800 Cottage Way, MP-410
 Sacramento, CA 95285

Dear Mr. Hubbard:

A profound need exists to reconcile ALL proposed water transfer policies with California's new Groundwater legislation, existing over-commitment of surface waters, and the current massive, long-term drought conditions. Groundwater levels are in severe decline in Northern California – and proposed transfers will only make this situation worse. Lack of snow and rain is limiting recharge of aquifers. Insufficient surface flows into San Francisco Bay and Delta are negatively impacting this most important estuary to fisheries on the West Coast. There simply isn't enough water to go around.

Many people living in Northern CA express deep and valid concerns about their wells going dry. People need water for personal needs, farming, fishing, recreation, and more. Yet, any hope for a "sustainable relationship" between the North State residents and our water supplies is evaporated by plans to transfer so much water south.

Governmental agencies should use the best, most current and pertinent data to make analyses of water systems so as to make good predictions and plans. However, the baseline data your agency uses to plan transfers of water out of Northern California includes only the years 1973-2003. As the current extensive, severe drought continues, more current data must be incorporated to make appropriate predictions and plans. Careful conservation and wise use of precious water can be better planned using more accurate data.

Please help everyone in California confront the realities of the current drought and on-going climate change. Conserving water should be the major focus of government agencies and corporations, as well as residents and small farmers. For example, directing farmers to plant crops that use far less water than many current agribusinesses 'need,' and to use drip irrigation instead of 'flood' irrigation methods still in common use. Residents and municipalities should greatly reduce turf grass and other water-intensive landscaping, replacing it with less water-thirsty plantings.

We cannot afford to have Northern California streams, lakes, and groundwater drained just to transfer water to reservoirs and tunnels designed to help Southern California water districts and big agricultural corporations make profits and maintain their status quo. The costs to our communities and environment (including forests, animals, fishes), and taxes, are simply too high. We do not want or need a "Cadillac Desert" in California.

Sincerely,
Joni C. Stellar
Butte County resident dependent upon groundwater

--
Joni Stellar
Treasurer
Frack-Free Butte County

--
Thanks,

Brad

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Monday, December 01, 2014 9:04 AM
To: Frances Mizuno; Buckman, Carolyn; Veronese, Gina
Subject: Fwd: Long-Term Water Transfers Draft EIR/EIS

Comment email.

----- Forwarded message -----

From: <g-marvin@comcast.net>
 Date: Mon, Dec 1, 2014 at 7:13 AM
 Subject: Long-Term Water Transfers Draft EIR/EIS
 To: bhubbard@usbr.gov
 Cc: "Casey, Louise" <YAHInews@comcast.net>, "Fritsch, Sharon" <safritsch@comcast.net>, "Garcia, Celeste" <celesterdh@mynvw.com>, "Garcia, Dave" <rangerdave@mynvw.com>, "Heath, Laurel" <laur3290@gmail.com>, "Hollister, John" <hubhollister@yahoo.com>, "Krause, Paul" <paul@paulkrause.com>, "Lydon, Gerda&" <plydon2948@aol.com>, "Marvin, Grace" <g-marvin@comcast.net>, "McKinney, David" <daviddryfly@comcast.net>, "Mendoza, Alan" <ajmendoza@prodigy.net>, "Welch, Suzette" <booksontape@rocketmail.com>

From: 1621 N. Cherry Street
 Chico, CA 95926-3141
 November 30, 2014

To: Mr. Brad Hubbard
 Long-Term Water Transfers Draft EIR/EIS
 2800 Cottage Way, MP-410
 Sacramento, CA 95285

Dear Mr. Hubbard:

As Conservation Chair of the Yahi Group of the Sierra Club, I attended your "Public Meeting" on 10/21/2014 concerning Long-Term Water Transfers Draft EIR/EIS.

In light of my concerns about the talk, I asked questions at the meeting linking the need to connect the spirit behind the Groundwater legislation adopted by Governor Brown for our state and the transfer policies. Subsequently, I reviewed the the Sierra Club water policy (developed by the Club's California Nevada Regional Conservation Policies or CNRCC in 1993 and amended in 2004 and 2009). There I saw how the transfer policy you presented violated the spirit of the club's water policies that are devoted to careful preservation and wise use of our natural resources. Here are some examples:

The CNRCC states one goal is to "preserve and restore naturally functioning biodiverse, and productive aquatic ecosystems throughout California." In my opinion, to do so requires that agencies use pertinent data to make analyses of water systems so as to make better predictions. But the baseline data your agency uses to plan transfers of water out of the north state cover the years 1973-

2003. Since we are now seeing uniquely dry conditions now and well into the future, why not use more current data to make predictions? “Careful preservation and wise use” of our water can be better planned using more accurate data.

2

Another process that is violated in the transfer policies is the following: “Develop a sustainable relationship between people and the aquatic environment to meet the needs of each.” As we heard at the 10/21/14 meeting a large number of people expressed deep concerns about their wells being either completely dry or nearly so. People need this water for personal needs, farming, fishing, recreation, and more. Yet, any hope for a “sustainable relationship” between many of us in the north state and our water supplies was evaporated by the plans to transfer water south.

3

Furthermore, the Water Ethic” spelled out in the CNRCC policy is that individuals and organizations should “utilize water conserving practices in agricultural and urban areas.” But no mention was made of any kind of effort to direct farmers to plant crops that use far less water than many current agribusinesses 'need.'

4

Finally, the Sierra Club is focused on the environment--which we are supposed to enjoy, preserve, and protect. Many other aspects of the CNRCC policy are violated with the water transfer policy, but I ask you to pay special attention to this one, since you are part of an institution that is capable of making such changes: “Adapt water use, pollution control, land use, and other social and economic patterns to reduce and avoid conflicts with environmental needs.” Please help us in the north state in confronting the current drought and on-going climate change. We cannot afford to have our streams, lakes, groundwater, and rivers drained in order to transfer water to reservoirs and tunnels designed to help southern water districts and agricultural corporations make profits that cost our environment (including trees, animals, fish) so much. We do not want another “cadillac desert” in California.

5

Sincerely,
Grace M. Marvin
Conservation Chair
Sierra Club, Yahi Group

--
Thanks,

Brad

December 1, 2014

Brad Hubbard
U.S. Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Re: Comments on the Long-Term Water Transfers Draft Environmental Impact Statement /
Environmental Impact Report (Draft EIS/EIR) – The Nature Conservancy

Dear Mr. Hubbard,

As both a conservation organization and land owner in the Delta and Sacramento Valley, The Nature Conservancy (TNC) has been engaged in the Central Valley and Delta for many years to advance the recovery of endangered species, restore and preserve multiple types of habitat, and seek to apply sound science and practical solutions that work for nature and people.

Of particular interest to the Conservancy is the importance of achieving overall sustainable water management practices in California; both for the benefit of people and natural systems. The California Water Action Plan recognizes that this includes imperative actions such as improving groundwater management, better managing our surface flows, restoring wetlands and watersheds, and facilitating water transfers. The challenge facing California's water managers, including the federal agencies and water districts who are the principal entities that will participate in—and benefit from—this Long-Term Water Transfer program, is to implement water transfer programs in a manner that is clear and transparent, based on sound science, and which minimizes impacts by design, especially in areas of origin.

We agree that water transfers are an important tool for overall sustainable water management when properly designed and implemented with appropriate mitigation; however, we are concerned about the potential impacts that could occur with implementation of the Proposed Action, and we are not confident that these impacts have been addressed through the mitigation measures and environmental commitments outlined in the Draft EIS/EIR.

In particular, The Nature Conservancy is concerned about the impacts to fish and wildlife that could result from surface water and groundwater transfers of the magnitude envisioned in the Draft EIS/EIR, especially related to sustainable groundwater and surface water management. We are also concerned that the fallowing described in the Proposed Action may impact wildlife-friendly farming necessary for Pacific Flyway habitat for migratory birds. For example, water transfers are likely to result in the idling of riceland and other compatible agricultural land in the Sacramento Valley, where now the water applied to many of these crops serves multiple purposes and represents a decade of cooperation and innovation between our organization, our partners, and the landowners with whom we work. As we discuss below, more robust environmental commitments are critical to address the potentially significant impacts of the

Proposed Action, and also present an opportunity to demonstrate true sustainable water management that works for both people and natural systems. Additionally, the Draft EIS/EIR must demonstrate a clear linkage and rationale between the environmental commitment or measure and what impact will be avoided or mitigated, and use best available science.

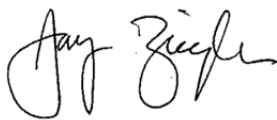
1

The attachment elaborates on the following summary of our comments, and provides recommendations that can serve as a starting point to develop more robust environmental commitments for the Proposed Action.

1. **Environmental commitments are inadequate to avoid or mitigate impacts, and must give environmental consequences a “hard look.”**
2. **Environmental commitments to address impacts to migratory and resident waterbirds must be expanded based on best available science and consider cumulative impacts from all sources of habitat reduction in the Central Valley.**
3. **Potential significant impact on Reclamation’s ability to deliver water to refuges should be analyzed and lessened through environmental commitments.**
4. **Impacts from groundwater substitution transfers should be accurately simulated and more clearly illustrated. The Draft EIS/EIR should account for compounding impacts of multiple or repeated groundwater substitution transfers over time, and water supply and environmental impacts should be mitigated until recovery is achieved.**
5. **Environmental commitments should more fully develop a suite of additional actions that ultimately result in additional benefits for nature and provide incentives for those actions such as a transfer priority system to drive their implementation and adoption.**

We urge you to strongly consider the additional our comments and the environmental commitments and mitigation measures we suggest, and would welcome the opportunity for additional dialogue.

Sincerely,



Jay Ziegler
Director, External Affairs & Policy
The Nature Conservancy, California Chapter
Jay_Ziegler@tnc.org
(916) 449-2857

Attachment

1. Environmental commitments are inadequate to avoid or mitigate impacts, and must give environmental consequences a “hard look.”

The Draft EIS/EIR includes environmental commitments to mitigate for the impacts of the proposed long-term transfers. The Bureau of Reclamation’s NEPA Handbook describes “environmental commitments” as “written statements of intent made by Reclamation to monitor and mitigate for potential adverse environmental impacts of an action associated with any phase of planning, construction, and operation and maintenance (O&M) activities. It is a term used by Reclamation to reflect the concept addressed in 40 CFR 1505.3.” Section 1505.3 of part 40 of the Code of Federal Regulations refers to the implementation of mitigation measures. The Draft EIS/EIR also describes the environmental commitments as comparable to the mitigation measures required under CEQA. Thus, the environmental commitments are intended to be mitigation measures.

NEPA requires that the environmental impact statement give a “hard look” at the environmental consequences of the proposed project. *Minnesota Public Interest Research Group v. Butz*, 541 F.2d 1292, 1301 (8th Cir. 1976), quoting *Kleppe v. Sierra Club*, 96 S.Ct. 2718 (1976). With respect to mitigation measures, a “hard look” requires that the measures “be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1154 (9th Cir. 1992) (internal citation omitted). “A mere listing of mitigation measures is insufficient to qualify as a reasoned discussion.” *Northwest Indian Cemetery Protective Assoc. v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), *rev’d on other grounds*, 108 S.Ct. 1319 (1988). Failure to include a “reasonably thorough discussion of mitigation measures . . . would undermine the action-forcing goals of [NEPA].” *Carmel-by-the-Sea, supra*, at p. 1154.

CEQA requires that an EIR describe in detail “[m]itigation measures proposed to minimize significant effects on the environment.” (Pub. Resources Code, § 21100, subd. (b)(3).) The CEQA Guidelines, the implementing regulations for CEQA^[1] set forth the detail required for an adequate description of mitigation measures. Section 15126.4, subdivision (a)(1) provides that an “EIR shall describe feasible measures which would minimize adverse impacts.” And section 15126.4, subdivision (a)(2) requires that “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.”

The environmental commitments included in the project description are inadequate as mitigation measures under both NEPA and CEQA. The descriptions are perfunctory and conclusory. For example, with respect to the impact on fisheries, the Draft EIS/EIR concludes without analysis that “The environmental commitments described in Section 2.3.2.4 incorporated into the project will reduce or eliminate significant impacts to fisheries resources and fish species of management concern. No additional mitigation is required.” (Draft EIS/EIR Ch. 3, § 3.7.4.) Presumably based on this conclusion, the Draft EIS/EIR goes on to conclude that “[n]one of the action alternatives would result in potentially

^[1] 14 Cal. Code Regs., § 15000 et seq.

significant unavoidable impacts on fisheries.” (Draft EIS/EIR Ch. 3, § 3.7.5.) Section 3.7.4 does not specify which of the environmental commitments will mitigate for impacts to fisheries or how that mitigation is expected to occur. More significant, none of the environmental commitments described in Alternative 2, the Proposed Action, addresses impacts to fisheries or measures for protecting fisheries. The Draft EIS/EIR fails to fully describe impacts to fisheries and mitigation for those impacts the requisite hard look and therefore is inadequate.

3

With respect to wetland plants and wildlife, the Draft EIS/EIR Section 3.8, page 3.8-64 states that: “The reduction in available habitat in rice fields and the associated reduction in the availability of waste grains and prey items as forage to wildlife species that use seasonally flooded agriculture for some portion of their lifecycle, could result in potentially significant effects to those species. These impacts are reduced by the environmental commitments in Section 2.3.2.4.” There is no elaboration or discussion of the rationale for this conclusion. It is not evident from the list of environmental commitments how any of the commitments would reduce the impacts to migratory birds and other wetland-dependent species that use flooded agricultural land to a less-than-significant level.

4

At a minimum, environmental commitments or mitigation measures should build on previously accepted protective measures that were determined through robust analysis. For example, environmental commitments should at a minimum include all of the giant garter snake protections that were included in the 2009 and 2010 biological opinions.

2. Environmental commitments to address impacts to migratory and resident waterbirds must be expanded based on best available science and consider cumulative impacts from all sources of habitat reduction in the Central Valley.

The one environmental commitment listed in Section 2.3.2.4 that is specifically written to mitigate for potentially significant impacts to birds states that minimizing cropland idling transfers in the Butte Sink will limit reductions in over-winter forage for migratory birds. As described in the Central Valley Joint Venture (CVJV) Implementation Plan as well as many peer-reviewed journal articles, known wintering areas for migratory waterbirds as well as priority habitat for shorebirds in spring and late summer extend far beyond the Butte Sink. Additionally, simply minimizing idling transfers in a specific area will not minimize the impact of the Proposed Action on migratory birds and resident waterfowl, as there will still be an overall reduction of available habitat in the Sacramento Valley due to the Proposed Action. Comparing the net reduction in available quality foraging habitat and bioenergetics (food) supply to the needs of the bird population across the Valley is the more appropriate metric to gauge impacts; this type of analysis was done as part of the Bay Delta Conservation Plan EIS/EIR, but not for this Draft EIS/EIR.

5

Crop idling transfers described in the Proposed Action will particularly reduce available habitat and forage in the Sacramento Valley in dry years. Although the Draft EIS/EIR limits idling to 51,473 acres of rice per year, this does not account for the impact already dry conditions may be having on habitat, the majority of which is now provided by flooded agricultural land. Chronic drought conditions over the last 3 years have led to fewer and fewer acres of flooded habitat available for birds at key times and places during their annual Pacific Flyway migration. This year conditions are particularly bad with abundant birds arriving from a good breeding season in the arctic only to find overcrowded conditions on available flooded habitat areas. Our scientists remain vigilant for cholera and botulism outbreaks that may impact special status species. We are so concerned that, with private funding, TNC has been working with

6

landowners to create flooded habitat conditions thousands of acres as an emergency backstop to severe shortages in migratory bird habitat during this drought year.

6

Although the Draft EIS/EIR describes the 51,473 acre limit as roughly equivalent to 10.5% of the average land in rice production from 1992 to 2012 (page 3.8-69), only about 140,000 acres of typical rice acreage was in production this year¹, and only about 50,000 acres of those were flooded for post-harvest decomposition, leaving only a small fraction of critical habitat available at critical times to migrating birds. Increased idling of compatible crops from the Proposed Action, particularly in dry years, will place additional pressure on the already-stressed refuges and compatible agricultural habitats, potentially resulting in significant impacts to species that depend on those habitats. There are ways to quantify this impact; for example, Ducks Unlimited has estimated that a “25 percent reduction in the number of acres in rice production would result in a loss of capacity to support about 600,000 ducks.”²

7

The fourth environmental commitment listed in the Draft EIS/EIR states that Reclamation will provide maps to the USFWS showing the parcels of riceland that are idled, but provides no further details about the use of these maps or FWS input will mitigate potential impacts described in the Draft EIS/EIR. How will the FWS use this information to make decisions regarding the Proposed Action? Will these maps be developed in conjunction with the FWS prior to the transfer, or after idling decisions are already made? How will this mitigate potential environmental impacts, particularly to terrestrial resources such as migratory birds?

8

Environmental commitments should be added that minimize the extent of idled land allowable in a basin so that it does not fall below CVJV habitat objectives or other protective, biologically-based thresholds. A maximum allowable percentage of idled rice should be set by county, accounting for all sources of fallowing, including drought and other transfer programs. These limits should be developed with biological analysis that demonstrates the impact on wetland-dependent species will not be significant. For example, bioenergetics modeling (such as TRUMET³) should be done to assess the impact that crop idling transfers and other habitat reductions cumulatively will have on available food supplies in various water year types, and establish limits that provide adequate food supply. Maps should be developed which compare available shallow mudflat habitat with and without the Proposed Action to gauge potential impacts to shorebird habitat at their critical migration periods.

9

To lessen impacts to migratory birds, we recommend that the environmental commitments and mitigation measures incorporate consultation with the CVJV partner organizations as well as the FWS, and that the process for review and enforceability be described in detail in the Draft EIS/EIR. The science and conservation organizations and agencies that comprise the CVJV, including the Bureau of Reclamation, work collaboratively to protect, restore, and enhance habitats for birds, in accordance with conservation actions identified in the CVJV Implementation Plan. This Plan sets quantitative habitat objectives based on best available science to ensure sustainable populations of migrant and resident birds in California, a

10

¹ Reported by the California Rice Commission. See, e.g., <http://abcnews.go.com/US/wireStory/california-drought-takes-bite-rice-harvest-26532978>; see also <http://www.capitalpress.com/California/20141021/rice-growers-wrap-up-drought-diminished-harvest>.

² Petrie, M., & Petrik, K. (May 2010). Assessing Waterbird Benefits from Water Use in California Ricelands. Report prepared by Ducks Unlimited for the California Rice Commission. Sacramento, CA.

³ TRUMET modeling was conducted for the Bay Delta Conservation Plan (“BDCP”) environmental documents.

critical area which has lost over 90 percent of its wetlands, within the context of the habitat in the entire Pacific Flyway. The Plan's objectives incorporate a baseline of habitat expected to be provided by private lands. Habitat provided by private wetlands and post-harvest flooded agricultural land is depended on to provide 60 percent of the energetic needs of waterfowl in the Central Valley during winter as well as vital nesting and brooding habitat for many other species.

Partner CVJV organizations, including TNC, have completed studies that establish likelihood of occurrence of shorebirds and other priority migratory bird species over time and space throughout the Central Valley, and have developed maps which should be used to establish where and when crop idling or shifting transfers could occur each year under the Proposed Action to minimize impact to these species. TNC would welcome the opportunity to work with project proponents along with state and federal agencies to advise appropriate use and interpretation of this best available science to minimize impacts to shorebirds and other species, but this must be explicitly described in the environmental commitments or mitigation measures. Such scientific evaluation should consider impacts to flows, floodplains, riparian habitat, and wetlands that reflect multiple habitat values.

Environmental commitments should include such actions as creating surrogate habitat at key times of year near the idled land. The Proposed Action should be linked to the environmental commitment; for example, flooding idled rice fields using a small reserved proportion of the total quantity of water approved for a transfer could provide habitat for migrating birds at key times of year, while also allowing most water to be transferred. This type of action, in combination with others, could help reduce the impact of some rice idling.

3. Potential significant impact on Reclamation's ability to deliver water to refuges should be analyzed and lessened through environmental commitments.

We are concerned that expanded transfers through the Delta will affect the Refuge Water Supply Program's ability to acquire, convey, and deliver water to refuges south of the Delta, a statutory obligation of Reclamation per the Central Valley Project Improvement Act (CVPIA).

The Draft EIS/EIR does not analyze the proposed water transfers' impacts on CVPIA refuges, although with increased competition for water conveyance through the Delta, the impacts to these public and private wetlands could be significant, especially in drought years south of the Delta. This year, for example, East Bear Creek Unit (within the San Luis National Wildlife Refuge Complex) and Kern National Wildlife Refuge are receiving very little water due to conveyance constraints and limited water availability. Wetland habitat there will be impacted for several years by these water shortages. With additional competition for water, reduced water availability, and increasing water costs, the Proposed Action could only make the situation more challenging.

The Environmental Setting should include a description of state wildlife areas and federal wildlife refuges. This seems to have been neglected in this Draft EIS/EIR, even though some of the participating agencies are involved in conveying refuge water and Reclamation is responsible for its delivery under CVPIA. Potential significant impacts from the Proposed Action should include water supply impacts to CVPIA wildlife refuges and the special status species they support. An independent panel convened to review the Refuge Water Supply Program (RWSP) in 2008-2009 found that, "The inability to consistently deliver firm and dependable Incremental Level 4 Water has, on occasion, pre-empted spring and summer

irrigations and maintenance of pond water, which has compromised the potential to stimulate germination of some plants, to maximize seed production, or to maintain summer pond water, which is required for successful breeding and survival of some of the sensitive and at-risk species that depend on the wetland habitats in refuges.”⁴ Because refuges already receive less water than what is required by CVPIA, further declines in refuge water deliveries could result in potentially significant impacts to these habitats and the special-status species they support.

13

The Draft EIS/EIR (page 2-18) states that transfers through the Delta will be “limited to periods when capacity at C.W. ‘Bill’ Jones Pumping Plant (Jones Pumping Plant) and Harvey O. Banks Pumping Plant (Bank Pumping Plant) is available typically from July through September, and only after Project needs are met.” The Draft EIS/EIR is not explicit about whether refuge water deliveries are considered a Project need. Because delivery of Level 2 and Incremental Level 4 water to refuges is a Central Valley Project obligation required by CVPIA Section 3406(d), we believe that Project needs implicitly include refuge water supplies, and that Level 2 and Incremental Level 4 water should have priority over the water transfers proposed in this Draft EIR. However, if Reclamation does not consider refuge water a Project need, then *the Draft should analyze how the Proposed Action could impact water delivers to the south of Delta refuges, and how any potentially reduced deliveries could impact migratory birds and other species that depend upon the refuges.*

14

Currently the RWSP does not deliver Full Level 4 water supplies to all refuges. The 2013 CVPIA Annual Report “Chapter 6 - Progress to Date Toward CVPIA Performance Goals” reported only 39% progress towards acquiring Incremental Level 4 supplies to date and 36% progress towards conveying Incremental Level 4 water supplies, although 100% attainment was required by 2002.⁵ The Nature Conservancy has worked for several years to understand these constraints and is currently working with Reclamation and CVP agricultural contractors to develop pilot projects that help address these constraints. One key constraint relevant to the Proposed Action is the increasing costs of acquiring and conveying water to refuges. Currently, because of budget and policy constraints and water availability, the RWSP relies primarily on spot-market water purchases rather than permanent acquisitions to provide some Incremental Level 4 water supplies to refuges. The increasing costs have outpaced the RWSP’s limited annual budget to meet Full Level 4 water supplies, resulting in less and less water acquired and delivered each year. The Proposed Action could increase the price of available spot-market water even more, which would impact the RWSP’s ability to purchase Incremental Level 4 water supplies, further impacting CVPIA refuge water deliveries and the waterbird populations they support. *The Draft EIS/EIR should analyze how the Proposed Action will impact water prices, and whether price changes will affect Reclamation's ability to meet its refuge water obligations under CVPIA.*

15

To help mitigate impacts to refuge water supplies and the habitats they support, *we recommend an environmental commitment be added that makes a percentage of each transfer available for purchase by the Refuge Water Supply Program towards meeting Full Level 4 water obligations.* That amount would not be credited to the transferor if the RWSP chose to purchase it, and instead it would be schedulable by

16

⁴ CVPIA Refuge Water Supply Program Independent Panel Review Report. “Undelivered Water: Fulfilling the CVPIA Promise to Central Valley Refuges”, dated November 3, 2009.)

⁵ Bureau of Reclamation, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife. 2014. Central Valley Project Improvement Act Public Law 102-575 Annual Report Fiscal Year 2013. January.

the Interagency Refuge Water Management Team for delivery to any delivery-short refuge, with reimbursement to the transferor by the RWSP.

The RWSP could also more efficiently manage its existing water supplies across all refuges and meet CVPIA mandates if north-to-south-of-Delta conveyance of RWSP-acquired water supplies and conserved refuge water was less constrained. The Proposed Action increases those constraints by increasing competition for conveying water transfers through the Delta. The situation is made even more difficult because refuges were not included in the Draft EIS/EIR as potential transferors or recipients of this water. To improve this situation and minimize the potential for significant impact, *we recommend that an environmental commitment be added that allocates a percentage of allowable CVP transfer capacity each month to the RWSP.* Under the commitment, the RWSP would have the first opportunity to schedule water during the window up to a certain flow or volume, if needed for optimal use of available refuge water supplies. Alternatively, *an environmental commitment could be added that reserves a percentage of each transfer through the Delta for use by the RWSP towards meeting Full Level 4 water obligations.* The full transfer quantity would be transferred through the Delta when scheduled by the transferring parties, but once south of the Delta, the refuge-reserved percentage could be stored in San Luis Reservoir for later delivery to a south-of-Delta refuge.

16

4. Impacts from groundwater substitution transfers should be accurately simulated and more clearly illustrated. The Draft EIS/EIR should account for compounding impacts of multiple or repeated groundwater substitution transfers over time, and water supply and environmental impacts should be mitigated until recovery is achieved.

4a. The connection between groundwater and surface water must be accurately simulated.

The ability to rigorously simulate interaction of groundwater and surface water is of great importance to assessing the potential environmental impacts of groundwater substitution transfers in this EIS/EIR because groundwater substitution pumping ultimately comes at the expense of streamflow. A coupled surface water-groundwater model provides for simultaneous solution of flow conditions in these physically coupled systems, thereby allowing for more representative simulation of the interaction of surface water and groundwater. Unfortunately, the groundwater model used for this Draft EIS/EIR analysis (SACFEM2013) is not coupled in this way. Instead, water levels (stages) in the streams are specified by the user. This does not reflect the reality that stream stage rises and falls through time during operation of surface water facilities and changes in groundwater pumping. This issue is likely most important for smaller streams, where changes in stage may lead to more significant changes in flow to or from the groundwater basin. Using SACFEM2013, how were specified stream stages arrived at, and are they ‘conservative’ relative to streamflow depletion impact analysis? *The Draft EIS/EIR should include a discussion of how stream stages were decided upon, the potential errors that could arise from specifying heads in streams with this model, and demonstrate why these potential errors are negligible in evaluating environmental impacts in both large and small streams or why they do not compromise the validity of the impact evaluation.*

17

4b. The impacts on riparian communities from lowered groundwater levels must be avoided or mitigated.

Section 3.8.2.4.1 of the Draft EIS/EIR states that the flow in many small streams would be impacted by more than 10 percent with implementation of groundwater substitution transfers described in the Proposed Action. Figure 3.3-29 shows that, as a result of these stream depletions, water table levels will be lowered more than one foot over much of the project area including along many streams and tributaries, and in many places drawdown may be as much as five feet. Natural riparian communities for some distance away from the rivers (the riparian corridor), and along many miles of rivers, could be impacted by these lowered groundwater levels; however, the Draft EIS/EIR only addresses potential impacts to riparian communities due to streamflow depletions—it does not estimate the impacts on natural riparian communities from the lowered water levels that will result from the pumping.

18

The impacts of these groundwater level drawdowns on riparian corridor communities need to be addressed. This is especially important since, as noted on page 3.8-47, groundwater levels that decline any deeper than key threshold levels (estimated at 15 feet below ground surface on page 3.8-47) will not meet the needs of many plants. In this light, declines of 1 to 5 feet could be significant in many riparian areas, and these impacts must be avoided or mitigated, thus the importance of detailed and transparent modeling and monitoring.

4c. Streamflow depletion resulting from groundwater substitution transfers must be fully accounted for, and the compounding quantity and duration of impacts must be reflected in the analysis and mitigation described in detail in Mitigation Measure WS-1.

Groundwater and surface water systems are interconnected; as a result, groundwater pumping ultimately leads to what is termed “streamflow depletion.” This streamflow depletion may be the result of either reduced groundwater discharge to the stream, in which case the stream experiences less gain (groundwater inflow) than before pumping was initiated, or it may be the result of additional induced infiltration from the stream, in which case the stream loses more water than it did prior to groundwater pumping. According to well established principles of groundwater-surface water systems, total stream depletion (from both reduced discharge and induced infiltration from the stream) will trend towards the amount of groundwater pumping in a given area over time, less other potential boundary effects such as subsurface outflow from the basin or changes in small watershed inflow.⁶

19

Streamflow depletion can occur for many years after groundwater pumping has ceased, and this long-term streamflow depletion and associated impacts must be considered and accounted for. Long-term impacts from multiple years of transfers are especially important to account for since impacts are additive and therefore potentially more severe. *The Draft EIS/EIR should include a full water budgeting accounting of where pumped groundwater is coming from and the related duration of streamflow depletion to disclose the location, magnitude, and duration of potential impacts.*

⁶ The technical aspects of these issues, and their importance to proper management of surface water-groundwater systems, is well-described in “Groundwater and Surface Water, a Single Resource” (USGS Circular 1139, 1998), and “Streamflow Depletion by Wells – Understanding and Managing the Effects of Groundwater Pumping on Streamflow” (USGS Circular 1376, 2012).

Simulations performed by TNC using DWR's C2VSim integrated ground and surface water model of the Central Valley indicate that groundwater pumping at scales similar to the Proposed Action affects a large area and, very importantly, that streamflow depletion from even a single year of such pumping persists for decades⁷. The timing of these impacts is illustrated in Figure 1, below.

Figure 1 shows that streamflow depletion is significant for many years after pumping has ceased, with only about 65 percent of ultimate stream depletion expressed even 5 years after pumping has stopped. It takes 25 years for the system to nearly fully "recover" (90 percent "depletion recovery"). Although different assumptions regarding well locations and depth will lead to differently shaped depletion curves, the best information available suggests that impacts from pumping will persist for decades for wells distributed over wide areas and depths, as is the case for the Proposed Action. In contrast, Figure 3.1-3 of the EIS/EIR does not reflect this full duration of impact, at least as expressed in percent changes in CVP and SWP exports. Please explain how the modeling done for this Draft EIS/EIR accounts for the compounding impacts to water supplies from multiple years of pumping, and how the duration of impact through full recovery will be accounted and mitigated under Mitigation Measure WS-1.

20

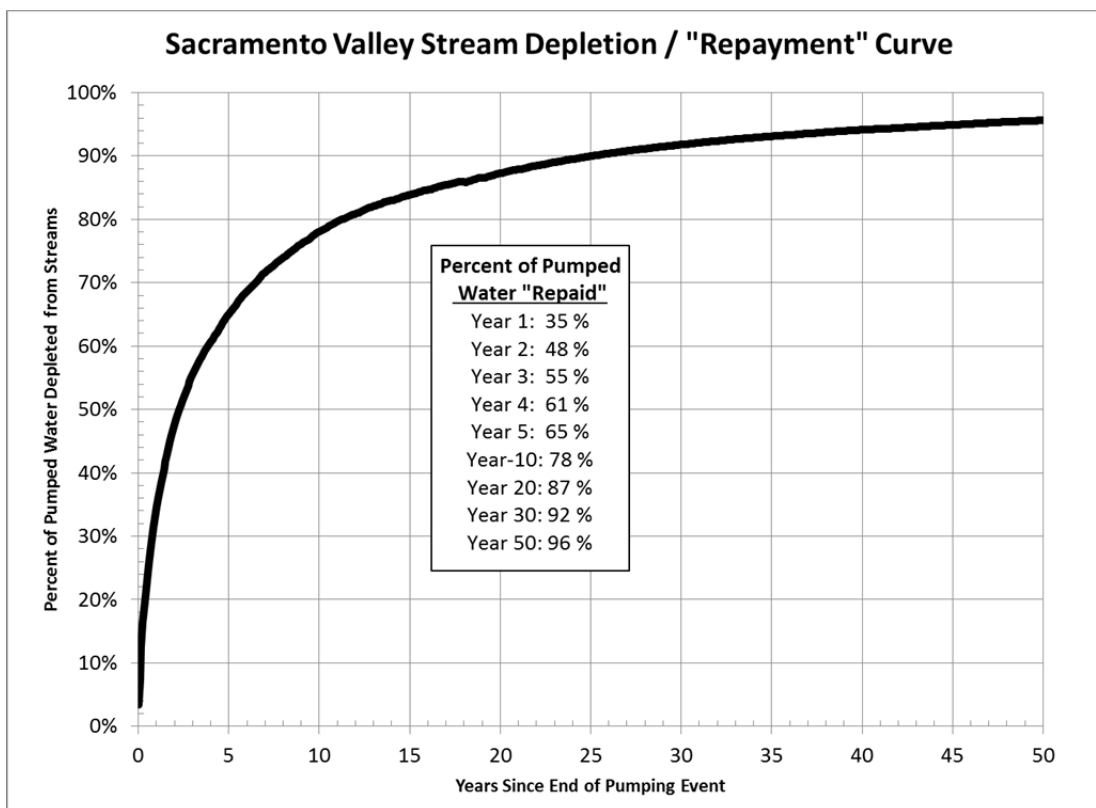


Figure 1. Normalized Stream Depletion Curve. (from TNC 2014, normalized to the simulated amount pumped in one season.)

⁷ The Nature Conservancy (TNC), 2014. "Assessment of Surface Water and Groundwater Conditions and Interaction in California's Central Valley, Insights to Inform Sustainable Water Management," June.

To appropriately characterize the potential water supply and environmental impacts of the Proposed Action, the Draft EIS/EIR must more clearly answer the question, “Which streams are likely to be depleted, by how much, and for how long?” The EIS/EIR needs to better account for the source of pumped water and its related cumulative impacts over time to both water rights holders (both export rights and in-valley rights) and the environment, and avoid or fully mitigate for those impacts. To fully mitigate for groundwater substitution pumping impacts on water supplies, Section 3.1.4.1, *Mitigation Measure WS-1*, must describe in detail how the streamflow depletion factor will be developed, account for compounding, and be applied over the duration of the project and beyond until recovery is achieved.

21

In recognition of the potentially significant environmental impacts of streamflow depletion from groundwater substitution transfers, *the secondary effects of changes in groundwater levels resulting from the Proposed Action (Section 3.3.2, page 3.3-59) should include: “(4) a reduction in groundwater levels that significantly impacts surface flows (streams or rivers) or the species, habitats, and other beneficial uses of these stream flows.”* Application of Mitigation Measure WS-1 should include consultation with fish and wildlife agencies during annual development of the streamflow depletion factor so potentially significant environmental impacts can be avoided early.

22

5. Environmental commitments should more fully develop a suite of additional actions that ultimately result in additional benefits for nature and provide incentives for those actions such as a transfer priority system to drive their implementation and adoption.

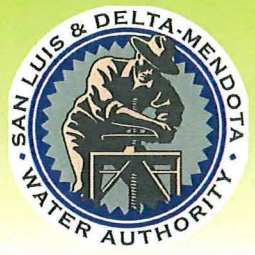
The Central Valley is already highly altered and many aquatic and terrestrial species dependent on its land and watersheds are already on the brink of extinction. The Sacramento Valley has made great advances in using a finite water supply for multiple benefits, such as optimizing diversions so both fish flows, migratory birds, and rice straw decomposition can occur simultaneously, with the same water supply. This progress could be thwarted and significant environmental and water supply impacts could result from transferring hundreds of thousands of acre-feet annually across basins and away from the Sacramento Valley where water is already used for multiple benefits.

To drive improvement and sustainability over time and mitigate for the loss of this progress, we recommend that an additional environmental commitments be included to develop a suite of additional actions that could be done in conjunction with water transfers in such a manner that transfers which also deliver other benefits for nature are prioritized within the system. That is, those agencies or transferring entities which provide the most robust monitoring, wildlife-friendly farming practices, and habitat-protecting regimes should be prioritized over transfers with less attention to environmental values and mitigation. We envision such practices will require both adequate incentives and monitoring to demonstrate performance. For example, the timing, capacity or priority to convey a particular transfer through the Delta could be enhanced to a degree proportional to the benefits created for nature by a chosen set of actions. The suite of actions and their relative value to nature could be developed in conjunction with input from TNC and other NGOs in consultation with state and federal wildlife agencies. Such actions should be designed in a manner that provides flexibility to meet multiple habitat values and applies new, cutting-edge ways to use water for multiple benefits on private and public lands and waterways. Implementing such a program would help drive conservation as a co-equal priority to water transfers designed to benefit urban and agricultural water uses, and will accommodate a broader use of water than otherwise would be accomplished through large scale water transfers.

23



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Bob Adams

Organization (If applicable): _____

Address: 21 B Camino Dr. Chico, CA 95973

Phone: (530) 624-1945 Fax: () _____

E-mail: _____

Date: 10/21/14

Comment: _____

Don't even think about taking water out of Butte County. We'll be in your face starting now. I've never given over \$20 to any cause.

Starting now, Aqualiance gets all my spare cash.

What kind of rotten, disassociated, (with any real people) bastards would even try this kind of crap.

Just expect max. flat, assholes.

Oct 22, 2014

Brad Hubbard,

1 I would like to protest the 10 year water transfer plan and express my frustration at the short period of time for public input.

2 Public awareness in northern CA is growing fast concerning The San Joaquin Valleys misguided water wishes. Along with ground water levels dropping and the ever-expanding tree farms around us, the smell of fear is pushing a greedy political process.

3 And the fish —?

Geoffrey Baugher

Box 977

Orland CA.

95963

SACRAMENTO CA 957

23 OCT 2014 PM 3 L



Long-Term Water Transfers Draft EIS/EIR

Brad Hubbard, Bureau of Reclamation

2800 Cottage Way MP 410

Sacramento, CA

95825

977
Orland, CA
95963

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Wednesday, November 26, 2014 10:06 AM
To: Frances Mizuno; Buckman, Carolyn; Veronese, Gina
Subject: Fwd: LONG-TERM WATER TRANSFERS

Here is a comment email, received today.

----- Forwarded message -----
From: <lindzer2@aol.com>
Date: Tue, Nov 25, 2014 at 4:49 PM
Subject: LONG-TERM WATER TRANSFERS
To: bhubbard@usbr.gov

Hello,

As a resident of Northern California, I am opposed to the Long-Term Water Transfers of Northern Ca. groundwater that is proposed by the Bureau of Reclamation.

Located in Northern Ca., the Tuscan Aquifer is one of the last remaining intact aquifers. Pumping up to 600,000 acre feet of our groundwater per year for 10 years will cause irreparable harm to the Tuscan Aquifer and Northern Ca. as a whole and only serve to benefit a very few water profiteers at the expense of the rest of the population_and the environment_our beloved oak trees are already at risk.

California is experiencing of one of the worst droughts in history. The lakes and reservoirs in Northern California are already at or below historic lows. Most streams that used to run year around are very low or dry. Many wells in and around the entire North State are running dry. Long range weather forecasts indicate there will not be any significant rainfall again this year to recharge the groundwater or refill the lakes and reservoirs and yet this proposal would take our water and sell it to those that have already decimated their own water sources.

Rain and snow melt flows into Shasta Dam and Lake Oroville and then is shipped south to Central and Southern Ca. Northern Ca. water is already heavily diverted and now there is this proposal to take our groundwater. Most cities and towns in Northern Ca. rely solely on groundwater. If that is pumped dry, there are no other alternative water sources.

Over and over again, aquifers throughout California have been overdrawn (more water is taken out than is replaced) and left permanently damaged. Irreparable subsidence (the land sinks when the water is drained from the aquifer) has been the result of many of these aquifers. As only one example, the San Joaquin Valley has seen irreparable subsidence (land sinking) by as much as 25 feet from 1925 to 1977.

California is a semi arid desert. California farmers use 80% of all fresh water available in the state. It makes no sense to allow farmers to continue to use flood irrigation and plant permanent high water use crops in a desert and continue to sacrifice water sources in one area to satisfy the thirst for water in another. Cities that do not have a sustainable source of fresh water need to reuse their water through tertiary water treatment and desalination plants and implement strict conservation measures. Using billions of gallons of fresh water for hydraulic fracturing and then polluting the remaining fresh water with the waste water is absolutely insane. Continuing to dry up sources of fresh water is short sighted. Unless we stop this trend, there will be no fresh water left for crops, environment or people.

I am sure you saw the recent 60 minutes episode on this subject which aired November 16. Studies by Hydrologist Jay Famiglietti at UC Irvine should be taken into account as part of the EPA impact study.

Sincerely,

Linda Calbreath
25 Blackstone Ct,

Chico, CA 95973
530-864-7417

--

Thanks,

Brad

October 25, 2014

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

RE: Long Term Water Transfer Draft EIS/EIR

Dear Mr. Hubbard:

It has only been in recent days that this abhorrent proposal has come to light in our neighborhood. I may not be up on all current events, but because my neighbors, who are farmers, doctors and lawyers, were unaware as well, it is obvious this proposal is sneaky and dirty handed.

The San Joaquin Valley has obviously not been a good steward of their water and now you want to penalize us and put our lively hoods and households in a very grave situation. Everyday I turn on the faucet, hoping my well will still produce. My neighbor, ½ a mile away, just drilled a new well at a cost of \$30,000+. Although, this looks like it's just a transfer of surface water via our canal system, it will mean further tapping of our ground water, which has dropped significantly in the past few years. To approve a proposal, based on a study of water years dating back 40 years, knowing we are in the worst drought on record, is incomprehensible.

I urge you to look at the real picture here and take the \$\$\$ out of the equation.

Sincerely,



Lynne Elhardt
Chico, CA

OCT 27 2014

OCT 27 2014

Mr. [Name]
[Address]
[City, State, Zip]
[Phone Number]

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Friday, October 31, 2014 8:55 AM
To: Buckman, Carolyn; Veronese, Gina; Frances Mizuno
Subject: Fwd: Managing Water in the West

----- Forwarded message -----

From: **Ginny** <vfreeman@digitalpath.net>
Date: Fri, Oct 31, 2014 at 8:10 AM
Subject: Managing Water in the West
To: bhubbard@usbr.gov

The Sacramento Wild Life Refuge outside of Willows, CA, needs to leave their water where it is. Our area is already groundwater deficient in it's upper levels due to over drafting in the lower levels. I know, because in my area alone, our ground water has "recharged", and I say that lightly. Our upper strata water "came back" after the local nut growers and corn growers stopped irrigating. They ***robbed*** us of our domestic well water, and since they quit sucking the water out of the ground for THEIR money making farm practices for the year, we have GAINED 35 FEET. (Look over your head and up 35 feet for A CONCEPT of how MUCH that is, then think of how many acres there are of that 35 foot gain of water below us.) This water is going to all disappear once the farmers, once again, steal our water for their nut crops.

KEEP GLENN COUNTY WATER IN GLENN COUNTY and let Merced pump for theirs!

Virginia Freeman

(530) 934-7658

--

Thanks,

Brad

Buckman, Carolyn

From: HUBBARD, BRADLEY <bhubbard@usbr.gov>
Sent: Tuesday, October 21, 2014 12:49 PM
To: Buckman, Carolyn; Veronese, Gina
Subject: Fwd: Water transfer

----- Forwarded message -----

From: FINCH HEATHER <hfincheyecarepro@yahoo.com>
Date: Tue, Oct 21, 2014 at 10:36 AM
Subject: Water transfer
To: bhubbard@usbr.gov

To Whom it may concern

I am writing to strongly disagree with the proposed 10 year water transfer of 195 billion gallons PER YEAR to the San Joaquin Valley. ARE YOU INSANE???? With the alarming drought that we are going through and PEOPLES wells going dry right and left, how can you even dream that this is going to happen without a devastating effect to Northern California? Instead of using this water transfer as a pipe dream(literally) why don't you start building systems through out the area for Rain Harvesting?

Thank you for your time. Please show some creative thinking ,using your brains and come up with a more sustainable plan for our future.
Heather Gray

--
Thanks,

Brad

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Monday, December 01, 2014 9:22 AM
To: Buckman, Carolyn; Veronese, Gina; Frances Mizuno
Subject: Fwd: Concerns about water transfers!

I believe this is the same comment email sent to Frances...

----- Forwarded message -----

From: **Steven Hammond** <schammond@earthlink.net>
 Date: Sun, Nov 30, 2014 at 8:42 AM
 Subject: Concerns about water transfers!
 To: bhubbard@usbr.gov

I am extremely concerned that the proposed water transfers from Northern California will result in irreparable damage to the aquifer in the area where I live, in Chico, California. I have been following this issue for years, and am convinced that the research on the negative effects of the proposed transfers has been strikingly inadequate. It is no secret that a great deal of the proposed water to be transferred (SOLD) will be substituted by the sellers in my area by "replacing" the water they sold with groundwater, which could deplete the aquifer in this area terribly. Many local wells in outlying areas have already been going dry.

I truly believe that the effects of this could be precipitate a disaster for my home - have you ever been to Chico? It is a very lovely small city for which the saving grace is a well-established canopy of trees. It is not at all a stretch to project that if the groundwater levels fall sufficiently this could become another Owens Valley.

Additionally, I think that factors such as the wasteful use of water in the southern districts who want the water have not been adequately addressed either. To continue growing nut trees in the desert, which takes tons of water, is simply not a good reason to deplete another region's water supply! The possibility of stopping this practice, and other possible ways of conserving and using water appropriately, have not been given enough consideration!

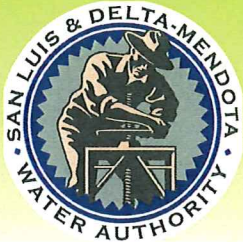
I truly think that the proposed massive water transfers are merely an example of robbing Peter to pay Paul - and are not only a mistake, and just plain wrong, but are also very short-sighted and need to be stopped until careful and longitudinal research can be completed.

I have to admit I mistrust your intentions, given what has occurred in this matter so far. I'd like to be shown that you are not in the pocket of those with the money to "BUY" what really shouldn't be available just because they want it, and because there are those who will "SELL" what isn't really theirs to sell: water.

Sincerely,
 Steven Hammond



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Scott Lape

Organization (If applicable): _____

Address: 1355 Kentfield Road Chico, CA 95926

Phone: (530) 342-2418 Fax: () _____

E-mail: ~~scottlape@usbr.gov~~ scottlape@comcast.net

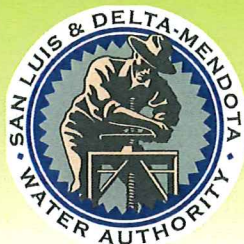
Date: Oct. 21, 2014

1 Comment: I'm strongly opposed to any water transfers out of Northern California. Local groundwater supplies are seriously depleted, and there is no reason to expect that the aquifer will regenerate any time soon. We don't know what the effects of climate change will be, and the precautionary principle suggests that we plan for the worst.

3 We have seen ~~what~~ the ~~destructive~~ effects of unsustainable agriculture in the San Joaquin Valley. Why should we allow greedy agribusiness to destroy the Tuscan aquifer the way they have destroyed the aquifers in the San Joaquin Valley?



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Linda Lokse

Organization (If applicable): _____

Address: 7833 - Co. Rd #29

Phone: (530) 934-4931 Fax: () _____

E-mail: _____

Date: 10-21-14

Comment: I do not approve of any Transfer of ground water.

Linda Lokse

No Action / No Project is the only choice.

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Wednesday, November 05, 2014 11:32 AM
To: Buckman, Carolyn; Frances Mizuno; Veronese, Gina
Subject: Fwd: Water Transfers

----- Forwarded message -----
From: **John MacTavish** <john.mactavish@lpl.com>
Date: Wed, Nov 5, 2014 at 11:20 AM
Subject: Water Transfers
To: bhubbard@usbr.gov
Cc: dmactav33@yahoo.com

Brad,

I attended the water transfer meeting in Chico on October 17th. As instructed, I am submitting the following questions for your response.

1. Please provide justification for using a study period ending in 2003? Please include in your response California population changes and farmed acres at the end of 2003 compared with 2013. I would also like to know actual water demands (usage) for the years 2003 and 2013. It would also be helpful to see your projections for future water usage going out for the next 100 years.

1
2. Who were the other consultants you considered to provide independent analysis and possible solutions? Was the selection done in a bid for services process? If so, is the RFP and bid submissions available for review?

2
3. Please provide the names, addresses, qualifications and phone numbers of the “ Decision Makers”.

3
4. Why were there no stakeholders from each of the effected communities/counties included in this process?

4
5. Who initiated the water transfer concept? Reclamation or San Luis/Mendota?

5
6. Why was the alternative of stopping or reducing tree crop plantings in the areas in need of water not offered as a possible solution?

6
7. Why was the alternative of selling surface water entitlements without ground water replacements considered as an option?

7

8. How much ground water in acre feet is in the Tuscan aquifer? Any recent reading within the last year will do. What are the last ten years measurements in acre feet? Please provide the basis/calculation methodology of your response.

8

9. How do we know for certain that groundwater storage will “recharge” over time? This was the vague unsubstantiated claim made in the consultants report.

9

10. This is a personal question to you as one of the “decision makers”, How can you in good conscience support pumping groundwater from a finite/fragile resource (when proof exists of other aquifers being damaged or pumped dry) to farm inappropriate crops in arid land? This is so short sighted and wrong.

10

Thank you in advance for your responses.

John MacTavish, CFP

LPL Financial

901 Bruce Road Ste 280

Chico, CA 95928

530-894-8696

John.mactavish@lpl.com

LPL Financial Member FINRA/SIPC

The information contained in this email is being transmitted to and is intended for the use of only the individual(s) to whom it is addressed. If the reader of this message is not the intended recipient, you are hereby advised that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error, please immediately delete.

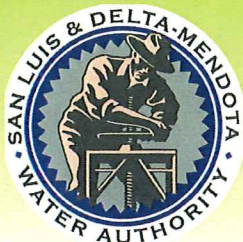
--

Thanks,

Brad



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: H. Elena Middleton

Organization (If applicable): Self

Address: 3805 Addys Lane

Phone: (530 345-1815) Fax: ()

E-mail: envizd@yahoo.com

Date: 10/21/14

Comment: _____

I strongly oppose the proposed water transfers. I Believe that there is not enough knowledge of the potential destructive and irreversible effects on ground water, creeks, environment and north state farms.



Water Resources ♦ Flood Control ♦ Water Rights

GILBERT COSIO, JR., P.E.
 MARC VAN CAMP, P.E.
 WALTER BOURZ, III, P.E.
 RIC REINHARDT, P.E.
 GARY KIENLEN, P.E.
 DON TRIEU, P.E.
 DARREN CORDOVA, P.E.
 NATHAN HERSHEY, P.E., P.L.S.
 LEE BERGFELD, P.E.

ANGUS NORMAN MURRAY
 1913-1985

CONSULTANTS:
 JOSEPH I. BURNS, P.E.
 DONALD E. KIENLEN, P.E.

December 1, 2014

Brad Hubbard
 U.S. Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825

Subject: Comments to Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report Public Draft

Dear Mr. Hubbard:

Thank you for the opportunity to review and provide comments to the Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report Public Draft (Draft EIS/EIR). The purpose of this letter is to provide a list of our comments and observations based on our review of the Draft EIS/EIR and information that we have available to clarify details associated with potential water transfer participants identified in the Draft EIS/EIR. We have attempted to identify the specific page and section for our comments; however, there may be other locations in the Draft EIS/EIR where our comments would apply. Following your review of this letter, please contact our office if you require any clarifications or additional information. The following is a list of our comments and observations:

1. Page ES-6, Table ES-2:

Based on data provided by Gilsizer Slough Ranch, the maximum potential transfer quantity should be 4,500 acre-feet. This comment also applies to Table 2-4.

2. Page ES-10, 1st Paragraph:

Identifies that "...a CVP seller would forbear (i.e., temporarily suspend) the diversion of some of their Base Supply...". We believe that a transfer of water involving a CVP seller may also include a portion of the CVP seller's Project Water supply. Thus, we believe the Draft EIS/EIR should cover water transfers involving Project Water to provide flexibility to the potential water transfer participants.

3. Page ES-10, Section ES.4.1:

We believe there may be opportunities to make surface water available during the month of October. For example, the Draft EIS/EIR should provide for the potential that surface water may be made available by groundwater substitution for rice straw decomposition. Thus, we believe the potential period for surface water made available by groundwater substitution should include April through October.

3

4. Page ES-11, Section ES.4.4:

The description of establishing a baseline for crop shifting should refer to the methodology outlined in the Draft Technical Information for Preparing Water Transfer Proposals (DTIWT) in order to maintain consistency.

4

5. Page 2-17, Table 2-5:

Based on data provided by Gilsizer Slough Ranch, the upper limit for July-September groundwater substitution transfer should be 3,000 acre-feet. This comment also applies to Table 2-7 and Appendix A, Table 5-1.

5

6. Page 2-26, 1st paragraph:

Identifies that water transfers involving Merced Irrigation District (Merced ID) through delivery methods (excluding Banks and Jones Pumping Plants) could be used throughout the irrigation season of April through September. We believe this should be clarified to provide flexibility for these delivery methods to be used throughout the year for water transfers involving Merced ID.

6

7. Pages 3.1-6 through 3.1-12:

Quantities listed in the descriptions of the potential sellers should correspond to quantities in Table ES-2 and Table 2-5. Specifically, the quantities for Conaway Preservation Group, Pleasant Grove-Verona Mutual Water Company, Te Velde Revocable Family Trust, Garden Highway Mutual Water Company, and Gilsizer Slough Ranch should be revised.

7

8. Page 3.1-6, Footnote 3:

Footnote 3 should be clarified to identify the following:

8

“Conaway Preservation Group (CPG) has assigned portions of its water rights

and Sacramento River Settlement Contract to the Woodland-Davis Clean Water Agency (Agency). Amendment No. 1 to CPG's Settlement Contract, which identifies the assignment of 10,000 AF to the Agency, is effective upon the earlier of the Agency diverting water or January 15, 2016. After that time, CPG may receive surface water under the portion assigned to the Agency."

8

9. Page 3.1-8, River Garden Farms:

The description should be clarified to identify that River Garden Farms supplements its surface water supply with groundwater wells (i.e., eliminate reference to "three" groundwater wells).

9

10. Page 3.1-10, Tule Basin Farms:

The description should be clarified to identify that Tule Basin Farms diverts water from the West Borrow Pit of the Sutter Bypass (i.e., eliminate reference to the "Feather River").

10

11. Page 3.1-13, Merced Irrigation District:

The description should be clarified to identify that: "Merced ID supplies water principally for agricultural purposes" (i.e., eliminate reference to the "M&I" purposes).

11

12. Page 3.1-21, Section 3.1.4.1:

Relative to the streamflow depletion factor, in the case that the U.S. Bureau of Reclamation (Reclamation) and/or the Department of Water Resources (DWR) believe that the factor is to be refined for the following transfer season, there should be a date by which the water transfer participants, Reclamation, and DWR discuss potential refinements to the streamflow depletion factor (e.g., by December 1).

12

13. Page 3.2-31 through Page 3.2-50:

It appears that tables identified in Section 3.2 and Sections 3.13 through 3.17 are intended to present the same information for a particular alternative; however, the data in the tables are different. For an example, see Table 3.2-23 and Table 3.17-1. We believe the differences between the relevant tables should be examined in further detail to provide clarification and consistency.

13

14. Page 3.2-41, Last Paragraph:

There may be other circumstances that affect storage in San Luis Reservoir that would not lead to decreased storage for nearly all months of the year, such as transfer water that may be temporarily held in San Luis Reservoir prior to delivery to the buyer. We believe this should be clarified/explained in additional detail.

14

15. Page 3.3-5, 5th Paragraph:

In regard to well completion reports, we believe that groundwater wells approved in 2009 through 2014 should be accepted for future groundwater substitution transfers unless technical evidence indicates use of the well could result in impacts to third parties or the environment. This is consistent with the Addendum to Draft Technical Information for Preparing Water Transfer Proposals dated January 2014, prepared by DWR and Reclamation.

15

16. Page 3.3-29, 1st Bullet:

The land subsidence identified is characterized as “inelastic” from 2013 to 2014. Due to the brief time period following the observed subsidence to date, and considering the persistent drought conditions, we believe that the term “inelastic” should be removed.

16

17. Page 3.3-69, Table 3.3-3:

The following are clarifications to the data listed in Table 3.3-3, as follows:

Conaway Preservation Group: 70-980 feet.
Garden Highway Mutual Water Company: 115-250 feet.
Natomas Central Mutual Water Company: 110-960 feet.
Pelger Mutual Water Company: 4 Wells; 101-485 feet.
Pleasant Grove-Verona Mutual Water Company: 34 Wells; 99-260 feet.
Reclamation District 1004: 21 Wells; 56-430 feet.
River Garden Farms: 9 Wells; 170-686 feet.
Te Velde Revocable Family Trust: 150-455 feet.
Tule Basin Farms: 120-405 feet.

17

18. Page 3.3-89, Land Subsidence Bullet:

As stated in the current DTIWT, Reclamation and DWR should coordinate with the water transfer proponent to develop a mutually agreed upon subsidence monitoring program for areas with documented historic land subsidence and higher susceptibility to land subsidence. This should be identified in this section, as the current paragraph seems to indicate that subsidence monitoring is required for all participating sellers; however,

18

subsidence monitoring may not be necessary for each area.

18

19. Page 3.7-1, Section 3.7:

The sub-sections to Section 3.7 refer to time periods for potential water transfers. In order to preserve flexibility for the timing of potential water transfers, we believe Section 3.7 should include additional clarification that water transfers may occur during periods other than July through September. This may also need to be addressed in Appendix A (see Page 3-4, Section 3.6.1). One example of the potential for transfers occurring during other periods is identified on Page ES-9:

19

“Through Delta transfers would be limited to the period when USFWS and NOAA Fisheries find transfers to be acceptable, typically July through September, unless a change is made in a particular water year based on concurrence from USFWS and NOAA Fisheries.”

20. Section 3.10.1.3:

Sacramento County is not included in the Regional Economics analysis. The reason for this is unclear; and should be identified in this section.

20

21. Page 3.10-23, Cropland Idling Acreages:

It is uncertain whether the analysis for the Draft EIS/EIR would limit the crop acreage that may be idled (or shifted) to the estimates identified in this section, including Sections 3.3, 3.8, and 3.9. We believe that these sections should provide for potential adjustments to the maximum acreage idled or shifted to allow for flexibility.

21

Following your review of this letter, please call if you have any questions.

Sincerely,
MBK ENGINEERS



Darren Cordova



Angela Bezzone

Mary McCluskey
501 Hoopa Cir.
Chico CA 95926

Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Dear Mr. Hubbard,

I am writing to express my concern over the Enviornmental Impact Report of the proposed 10 year water transfer program.

I have read the report, and even though I am not a lawyer, it is easy to tell that the report was written with little regard to the impacts to Northern California.

I have also read the letter written to you and to the San Luis & Delta-Mendota Water Authority by the Butte County Board of Supervisors. As a resident of Butte County, I fully support the their position in the letter – that the report is “seriously flawed” and needs revision. I also support their request for an additional 90 days for public review.

Sincerely,


Mary McCluskey

10/1/14
10/1/14
10/1/14

10/1/14
10/1/14

10/1/14
10/1/14
10/1/14

10/1/14
10/1/14

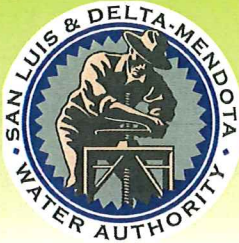
10/1/14
10/1/14
10/1/14

10/1/14
10/1/14

NOV 24 2014



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Peter Ratner

Organization (If applicable): _____

Address: 44 Dacy Ave Chico 95973

Phone: (530) 345 4603 Fax: () _____

E-mail: peter.ratner@gmail.com

Date: 10/21/14

Comment: I am opposed to ANY water transfer to Southern Cal ~~unless~~ unless & until mandatory conservation measures are adopted by the agencies wanting the transfers.

In this current drought, it is irresponsible at the least ~~to~~ to continue the use of water for such non-sustainable ~~activities~~ uses as lawns, golf courses & irrigating desert land for farming.



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Edwin Roland McNitt

Organization (if applicable): Chico saddle heads

Address: POB 4862 Chico CA 95927

Phone: () Fax: ()

E-mail: eddyroland7u@gmail.com

Date: 20 Nov 14

Comment: Regarding EIS:

ES 4.1 Groundwater substitution: "Groundwater storage would fill slowly over time". UNACCEPTABLE
WORDING FOR EIS We need to know exactly how long...
Table 2.9 Proposed Mitigation "NONE" UNACCEPTABLE

I witnessed your d and pony show at Chico. The unaddressed elephant in the room, to which almost all comments were directed to, was the issue of regeneration, which was not calculated in EIS. Groundwater substitution is like inheriting a fortune and squandering it, living high on the hog until it's all gone and you're left in poverty. The wise person sets up that that fortune as a PUBLIC TRUST, so that it lasts all your life, and your children's and grandchildren's in perpetuity.

Northern California says no to water transfers, especially when you have NO DATA ON AQUIFER REGENERATION.



UNITED STATES POSTAL SERVICE

Dear Postal Customer:

The enclosed has been damaged in handling in the Postal Service.

We realize that your mail is important to you and you have every right to expect it to be delivered intact and in good condition. The Postal Service makes every effort to properly handle the mail entrusted to it but, due to the large volume, occasional damage does occur.

When a Post Office handles in excess of 7 million pieces of mail daily, it is imperative that mechanical methods be used to maintain production and ensure prompt delivery of the mails. It is also a fact that modern production methods do not permit personal attention to individual pieces of mail. Damage can occur if mail is insecurely enveloped or bulky contents are enclosed. When this occurs and our machinery is jammed, it often causes damage to other mail that was properly prepared.

We are constantly striving to improve our processing methods to assure that an occurrence such as the enclosed



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Margaret Rader

Organization (If applicable): _____

Address: 1866 Bidwell Ave Chico

Phone: () _____ Fax: () _____

E-mail: mrader@pacbell.net

Date: 10/22/14

Comment: I am in full support of all comments made by members of the audience in Chico on Tues. 10/20/14.

I particularly agree with one gentleman who felt that the primary basis for long term water transfers is greed. The desire of a few to control our valuable water resources is beyond reason given the current drought situation (not previous drought history) in the Northern Sacramento Valley

Margaret Rader

Margaret Rader
1866 Bidwell Ave.
Chico, CA
95926



Long-Term Water Transfers Draft EIS/EIR
Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

9582531858 C015



Please fold, staple, stamp, and mail.



OCT 24 2014

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Friday, November 28, 2014 10:01 AM
To: Frances Mizuno; Buckman, Carolyn; Veronese, Gina
Subject: Fwd: Long-Term Water Transfers

Another comment email...

----- Forwarded message -----

From: Sherri Scott <sherri@grubchico.org>
Date: Fri, Nov 28, 2014 at 9:27 AM
Subject: Long-Term Water Transfers
To: bhubbard@usbr.gov

I would like to share my opposition to the taking or selling ('transfers') of any water that affects my home and environs, being the North State, not from surface nor from ground sources. They are all intertwined as a whole ecosystem and it all affects me and my health, my livelihood, my thriving agricultural community, and the natural and diverse beauty of nature that brought me to this area. I represent many others who moved to this area for exactly the same reasons and your proposal threatens our way of life!

1

Currently I am witnessing a terrible die off of 50-100 year old trees on the farm. This is at a terrible loss of shade and habitat, but in economic terms that adds costs to summer cooling, high costs of employing tree work to prevent the loss of property as the trees fall or loose limbs, as well as the loss to property if the limbs escape maintenance.

2

Many farmers I know had to dig their well deeper this year and/or lost their pump due to a drop in the water. Our ag well that has gone dry each summer for the last 3 years for August, was dry before the summer even began this year. Fortunately we have been able to use a small domestic well as our back up. Regardless, each year knowing that our water supply could be compromised, we make conscious decisions on how much land we can farm and what types of crops can be managed with what we have. **This is responsible farming.** I refuse to allow folks who view water irresponsibly, relying on water needy crops and industries, to take the water that feeds me, my community, and my ecosystem.

3

I see all around me in neighborhoods and on hikes that plants and trees are dying. I rely on this shade cover to cool me in the summer. The trees rely on the water that its roots worked so hard over a long period of time to reach. The plants around them rely on the shade and water that the

trees provide. The animals, the insects, the birds, the mushrooms, the microorganisms and us humans all rely on this.

3

I hear repeated stories at the farmers market from customers who are witnessing the same things about the effects of drought: dead/dying trees, more insect pressure, more desperate invasions of their fenced off gardens by deer and other animals. They are noticing for the first time or higher occurrences of large predators desperately roaming into human populated areas to find food.

It is unconscionable to even suggest that the water removal in this water proposal will not affect us residents of the North State, us farmers, us nature lovers, us shade lovers! It is unconscionable to even suggest that the money and needs of the Westlands Water District are more important than those that fell in love with this area, moved here, laid their literal and figurative roots down, paid their taxes, and have no real say in actions that SEVERELY affect their way of life and in their livelihoods! It is ridiculous! It is atrocious! It is conniving! IT IS GREEDY!

4

Please stop this water grab!

~Sherri Scott

1525 Dayton Rd.

Chico, CA 95928

530-342-3376

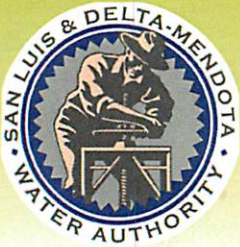
--

Thanks,

Brad



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Amalie Sorensen Amalie Sorensen

Organization (If applicable): _____

Address: 1619 Arcadian Ave Chico CA 95926

Phone: 530-345-0201 Fax: () _____

E-mail: AMALIESORENSEN@comcast.net

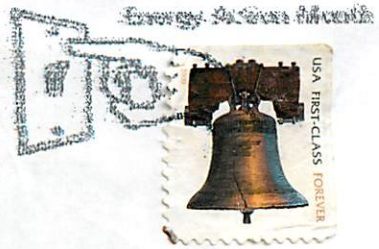
Date: 10/27/14

Comment: We are farmers (my family) for generations - and generations to come (HOPEFULLY). We farm SUSTAINABLY.

We and outraged others will fight this criminal water-stealing legally. You greedy, Motherfuckin' weirdos can F*ck off and GO TO HELL if you're NOT there already.
Get a life, please! we could be friends in this but NOT by your tactics alone.

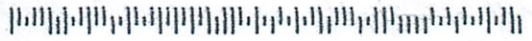
CA 957

30 OCT 2014 PM 3 L



Long-Term Water Transfers Draft EIS/EIR
Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

95825199000



Please fold, staple, stamp, and mail.



OCT 31 2014

Buckman, Carolyn

Sent:

To:

Subject:

Attachments:

----- Forwarded message -----

From: **Tony St. Amant** <tsainta@hotmail.com>

Date: Fri, Oct 24, 2014 at 8:00 AM

Subject: Long term water transfers

To: "Brad Hubbard (USBR)" <bhubbard@usbr.gov>

Cc: "Gary Bardini (DWR, DD IRWM)" <gary.bardini@water.ca.gov>, "Frances Mizuno (SLDMWA)" <frances.mizuno@sldmwa.org>, "Matt Weiser (Sacto Bee)" <mweiser@sacbee.com>, "Heather Hacking (Chico ER)" <hhacking@chicoer.com>, "Melissa Daugherty (Chico News & Review)" <melissad@newsreview.com>, "Andrew Creasy (Appeal Democrat)" <acreasey@appealdemocrat.com>, "Chip Thompson (Red Bluff Daily News)" <editor@redbluffdailynews.com>

For:

Brad Hubbard

Project Manager

Bureau of Reclamation

U.S. Department of Interior

Dear Mr. Hubbard,

Your agency and the San Luis & Delta-Mendota Water Authority held a hearing in Chico earlier this week on the public draft of the EIS/EIR for long-term water transfers. The EIS/EIR attempts to justify the transfer of between 360,000 and 600,00 acre feet of water per year for ten years from sellers upstream of the Delta to water users south of the Delta and in the San Francisco Bay Area.

However, a critical fact came out during the hearing. The data for EIS/EIR's hydrologic analysis is based on the period 1970-2003. None of the climatologic or hydrologic reality the state has experienced since that time is included: none of the increasing evidence that we are actually in a period of climate change and none of the

clear, decade-long trends in groundwater declines seen in an increasing number of areas in the Northern Sacramento Valley.

2

The excuse offered by Carrie Buckman of CDM Smith, your consultant, was that the chosen water model is not up to date. The unanswered questions would be, “Why was an out-of-date model chosen?” And, as this analysis has been planned since at least late-2010 and modeling shortcomings have been known for at least those four years, if none is available, “Why hasn’t an up to date model been developed to fulfill this need that has been identified as critical to a large portion of California agriculture?” If the cost of a transfer program includes the need for an up-to-date model, then the proponent should be responsible for developing that model and validating it through a rigorous peer review process. Choosing an out-of-date model should not be an allowable choice.

3

I can see how SLDMWA would be pleased with hydrologic data that ended in 2003, but I don’t understand how your agency could support such an analytic shortcoming. It would seem to me that, as a federal agency, the Bureau would have a balanced responsibility between the welfare of water source areas north of the Sacramento Delta and water consumption areas south of the Delta. Your agency’s support of this terribly flawed analysis results in an inappropriate bias in support of the agencies that wish to import water to compensate for their decades long indifference to sustainable water supplies.

I urge the Bureau to withdraw the EIS/EIR until it is supported by up-to-date hydrologic and climatologic data analyzed through a vigorously peer-reviewed model.

Sincerely,

Tony St. Amant

Chico

--

Thanks,

Brad

Tony St. Amant

tsainta@hotmail.com, telephone (530) 332-9116

Local and Regional Public Policy Experience

Participant in most local and regional water forums from 1999 – present.

Public participant in developing the statewide Strategic Plan for Integrated Regional Water Management.

Public participant in the California Water Plan update 2013.

Public participant at most Northern Sacramento Valley Integrated Water Management Plan Board, Technical Advisory Committee, and public outreach meetings from January 2011 through December 2012.

Public participant in the Butte County general plan update from March 2007 through adoption in October 2010. Successfully advocated for inclusion of a water element.

Member of the initial Integrated Watershed Stakeholders' Group, the public advisory body for development of the Butte County Basin Management Objectives ordinance (Chapter 33A).

Public participant in development of the Butte County Groundwater Conservation ordinance (Chapter 33).

Butte County Deputy Chief Administrative Officer 1991-94, 2000-01

Provided staff support to the Butte County Water Commission, 1991-1994 (prior to establishment of the Water and Resource Conservation Department).

Budget and policy analyst for numerous county departments.

Prior Public Policy Experience

U.S. Air Force, 1957-1987

Retired as Director for Strategic Analysis at the Air Force Center for Studies and Analyses, Washington, D.C.

Education

Master's degree in Political Science, CSU Chico, California, 1991.

Bachelor's degree in Social Science, Troy State University, Alabama, 1973.

November 3, 2014

To: Brad Hubbard (USBR)
Frances Mizuno (SLDMWA)

Subject: Comment 1, Tony St. Amant, Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report, September 2014

Issue: The San Luis & Delta-Mendota Water Authority is inappropriate as a lead agency for the Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report, September 2014.

Summary: The San Luis & Delta-Mendota Water Authority (SLDMWA) does not meet California Environmental Quality Act (CEQA) requirements to be the lead agency for this EIR, and there is an unmitigable conflict of interest inherent with SLDMWA as the sole lead agency.

Recommendation:

The EIS/EIR should be withdrawn from public circulation; and

The lead agency should be changed to:

An appropriate state agency with SLDMWA and the counties that overlie the DWR Bulletin 118 groundwater basins and confined (deeper) aquifers from which groundwater substitution transfers may occur designated as responsible agencies; or

A group of agencies, including SLDMWA and the counties that overlie the DWR Bulletin 118 groundwater basins and confined (deeper) aquifers from which groundwater substitution transfers may occur, organized into a cooperative effort by contract, joint exercise of powers, or similar device¹.

Discussion:

1. SLDMWA does not meet CEQA requirements to be the lead agency.

SLDMWA is a joint powers public agency that encompasses approximately 2.1 million acres of 29 water service contractors within the western San Joaquin Valley and San Benito and Santa Clara counties. Its boundaries are coextensive with those of its members². All of SLDMWA's purposes and powers are centered on providing benefit to member organizations.³

¹ 14 CCR § 15051 (d).

² Amended and Restated Joint Exercise of Powers Agreement (SLDMWA JPA), San Luis & Delta-Mendota Water Authority, January 1, 1992, para. 3, pg. 4.

³ SLDMWA JPA, para. 6, pp. 4-7.

SLDMWA is a narrowly purposed regional organization, yet it is designated as the lead—and therefore, certifying—agency for this EIS/EIR, which has the potential to impact the long-term water supplies and environment of a number of California counties well removed from its geographical boundaries. This relationship does not comply with CEQA or Title 14, California Code of Regulations, nor does it recognize provisions of the Sustainable Groundwater Management Act.

CEQA § 21067 defines a lead agency as the public agency that has the principal responsibility for carrying out or approving a project which may have a significant effect on the environment. SLDMWA represents only half of the long-term water transfer process—the potential buyers. The other half—the potential sellers—is comprised of 29 independent agencies⁴, none of which are designated even as responsible agencies in accordance with CEQA § 21069.

14 CCR § 15051 (b)(1) , confirms SLDMWA as an inappropriate organization to be the lead agency: “The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose”

Beyond the environmentally-oriented requirements of CEQA and Title 14, the process should integrate the legislative intent of the Sustainable Groundwater Management Act, which among other things is to recognize and preserve the authority of cities and counties to manage groundwater pursuant to their police powers⁵ and that water transfers must respect applicable city and county ordinances⁶. SLDMWA is not the appropriate agency to be certifying findings that may relate to those authorities outside of its own boundaries.

With SLDMWA as lead agency and no potential sellers or source counties designated as responsible agencies, the process is unreasonably biased toward the narrow functional interests of SLDMWA and its joint agencies.

Potential sellers and source counties need to be authoritatively involved in any EIS/EIR certification process that holds the potential for long-term effects on their groundwater sustainability, as does this one. The ability to submit comments for *consideration* by SLDMWA and USBR falls far short of a valid, balanced process.

2. There is an inherent and unmitigable conflict of interest with SLDMWA as the lead agency.

Common law doctrine requires a public officer to exercise his or her powers with disinterested skill and primarily for the benefit of the public. Actual injury is not required. A public officer is barred from putting himself in a position in which he may be tempted by his own private interests to disregard his principals and the interests of others.⁷

⁴ Long-Term Water Transfers Public Draft EIS/EIR, September 2014, Table ES-2.

⁵ Sustainable Groundwater Management Act, Uncodified Findings (b)(5).

⁶ Sustainable Groundwater Management Act, § 10726.4, (a)(3).

⁷ Conflicts of Interest, Office of the Attorney General, 2010, para. B, pg. 102.

The structure of the unmitigable conflict of interest is embodied in three classes of interests which ought to be on equal ground in the water transfer EIS/EIR process but which are not:

Class 1: Willing buyers, represented by the EIS/EIR lead agency SLDMWA

The willing buyers of transferred water, some or all of the 29 members of the SLDMWA joint powers agreement, are at risk of suffering serious financial losses if they are unable to import water from other areas of the state over the next 10 years. Per its joint powers responsibilities, SLDMWA is obligated to act in the interests of, and for the benefit of, member agencies. Consequently it would be a breach of fiduciary responsibility for SLDMWA to act for the benefit of any other organization at the expense of its joint powers partners. SLDMWA is obligated to seek as much water as its member agencies need from source areas without regard for the economic or environmental impact on those areas. Yet the final EIS/EIR will reflect SLDMWA's *independent judgment and analysis*⁸, with no requirement to incorporate any concerns of source area public agencies, groundwater-dependent entities, or groundwater-dependent individuals.

Class 2: Willing sellers, unrepresented in the EIS/EIR process and representing no one in the source areas but their own individual single-purpose organizations

Willing sellers have no standing in the EIS/EIR. While their actions are integral to execution of the proposed water transfers, they were not accorded Responsible Agency status as seems to be indicated by CEQA § 21069. But even if they had been accorded Responsible Agency status, that status would have put their interests in conflict with the third class of interests, groundwater users in the source areas who are not willing sellers. This conflict exists in the northern Sacramento Valley because the willing sellers share water basins with other groundwater users as described below.

The core of this conflict is that willing sellers stand to gain revenue from their sales while those who do not sell—and have no standing in the selling process—stand to incur expenses as water levels decrease from groundwater substitution transfers because of their need to deepen wells and/or drill new wells.

Class 3: Groundwater users in the source areas who are not willing sellers, but who share their groundwater sources (basins) with willing sellers

Groundwater users in the northern Sacramento Valley who are not willing sellers of transfer water are groundwater-dependent cities and towns, groundwater-dependent rural homeowners, and groundwater-dependent agriculturalists. They are a large majority of the population in the northern Sacramento Valley in comparison to the estimated two percent of the population who comprise the potential sellers. This class stands to incur expenses as water levels decrease because of the need to deepen wells and/or drill new wells in response to lowered groundwater levels that will result from groundwater substitution water transfers. Their appropriate representation would be counties, which also hold statutory authority over ground water, but counties have not been accorded agency status in the process.

⁸ 14 CCR 15090 (a)(3)

If SLDMWA is a public agency, conflict of interest constraints must disqualify it from its role as sole lead agency for the long-term water transfer EIR. If SLDMWA is not a public agency, it is not eligible to be the lead agency⁹.

Conflicts of interest abound in the project and in the EIS/EIR, all of which should have been recognized during the scoping process four years ago. The fact they were not could be interpreted as a confirmation of biases that went into developing the project and producing the draft EIS/EIR. The time-frame for moving the water transfer project forward is critical, but SLDMWA's and USBR's failures to properly plan and coordinate this project over the past four-plus years should not be accepted as a valid reason to override the interests of source area organizations and citizens.

SLDMWA's and USBR's failure to integrate agencies into the EIS/EIR effort in a way that balances obvious and well known conflicting interests, whether caused by administrative oversight or bias, cannot be allowed to stand. The stakes for long-term water sustainability in the northern Sacramento Valley are just too high.

4

⁹ CEQA § 21067: "'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment."

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Monday, December 01, 2014 4:27 PM
To: Buckman, Carolyn; Veronese, Gina; Frances Mizuno
Subject: Fwd: Long-Term Water Transfers

Comment email.

----- Forwarded message -----

From: karen stinson <jcdlove123@gmail.com>
Date: Mon, Dec 1, 2014 at 4:00 PM
Subject: Long-Term Water Transfers
To: bhubbard@usbr.gov

Dear Mr Hubbard,

I attended the EIS/Eir Public Meeting in Chico on October 15, 2014. I am writing to you today to show my support for my community and for the natural resources we are so blessed with here in Butte County. I am writing to urge you to have more research done on the long term effects of transferring water from the Sacramento River and from the Tuscan Aquifer. In these times of out of control climate change and extreme weather conditions, I urge you to error on the side of caution when it concerns our water.

Thank You, and God Bless

Karen Stinson
Chico, CA

--

Thanks,

Brad

Buckman, Carolyn

From: HUBBARD, BRADLEY <bhubbard@usbr.gov>
Sent: Thursday, October 23, 2014 4:09 PM
To: Buckman, Carolyn; Veronese, Gina; Frances Mizuno
Subject: Fwd: Long-Term Water Transfers

----- Forwarded message -----

From: Paula Sunn <paulasunn@gmail.com>
Date: Thu, Oct 23, 2014 at 3:52 PM
Subject: Long-Term Water Transfers
To: bhubbard@usbr.gov

Dear Mr. Hubbard,

I live north of the Delta and am very concerned at the water transfers that have been occurring on a temporary basis and even more so about the EIS/EIR that would facilitate longer term water transfers.

Historically, in California, areas with less population, but with adequate water supplies have been exploited in order to keep the dryer, desert areas of the state from having to make the difficult decisions about whether current land use patterns are sustainable, regardless of the environmental and economic degradation that occurs in the areas of origin. The Owens Valley is a good example of this.

The EIS/EIR is flawed in not having a way to take into account that the data used to draw conclusions is outdated and that there are already problems occurring in the north state due to the ongoing drought, exacerbated by the transfers that are happening now. In short, there is no evidence that there will be future water supplies that will be sufficient to maintain the current patterns of usage in the areas of origin, much less enough to transfer water south to sustain agriculture in areas that have already overexploited their supplies, especially during the dryer periods that the EIS/EIR is intended to cover.

It strikes me that economic interests of those served by the San Luis & Delta-Mendota Water Authority as well as those in the areas of origin who have surface water rights to sell, while replacing this water with further groundwater pumping, ignores the long term ecological degradation that will occur as well as the populations in the north that rely on these supplies. Economic gain for a few is not what should be driving decisions made about resources relied upon by many.

I urge you to not only reject this current EIS/EIR, but to do what you can to stop the current temporary water transfers.

Respectfully,

Paula Sunn
 5613 Glen Way, Paradise, CA 95969
 (530) 514-1584

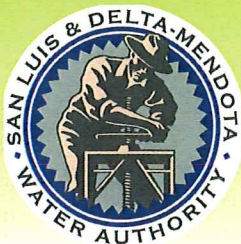
--

Thanks,

Brad



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: Melinda Teves

Organization (If applicable): _____

Address: 1066 E. 8th St., Chico CA 95928

Phone: () _____ Fax: () _____

E-mail: _____

Date: 10/21/14

Comment: _____

- No on groundwater substitution transfers

- No on putting these decisions in the hands of buyers and sellers with self-interest in mind

1

- No on implementing water transfers prior to localities taking over groundwater decisions per recent legislation

- No on formulating plans based on data before 2004.

2

- No on these proposed water transfers

3

Mrs. Sally Wallace
167 Mandalay Court
Chico, CA. 95973

October 24,2014

Long Term Water Transfers
Brad Hubbard
Bureau of Reclamation
2800 Cottage Way MP 410
Sacramento, CA. 95825

Dear Sir”

Everyone I know in Northern California, just about, is violently opposed to this Water Transfer. It is inconceivable that you would not only allow it but instigate it. One bad drought year, and this is the worst we have had in years, is not a good enough reason to send our water to Southern California. You might suggest they start desalination projects on ocean water, instead.

Another solution is more careful watering by the farmers... in the central and southern parts of the state..they have been rather profligate with water use over the years.

Most of all, we have to leave enough water in streams and rivers and forests for the wildlife... #1 priority, or should be.

At the very least, postpone the dams and transfers to the future... it's starting to rain, give nature a chance and don;t make panic decisions.

Respectfully

Mrs Sally Wallace
Mrs. S.M. Wallace

Mrs. Sally Wallace
151 Maryland Court
Chico, CA 95926

OCT 27 2014

October 27, 2014

Long Term Water Transfer
Bran Hubbard
Division of Water
Sacramento, CA 95833

Dear Sir:

I've not known in Northern California just about is violently opposed to this Water Transfer. It is inconceivable that you would not only allow it but instigate it. One bad drought year and this is the worst we've had in years. It's not a good enough reason to send our water to Southern California. You might suggest that that destination projects on ocean water instead.

Another solution is more careful watering by the farmers... in the central and southern parts of the state they have been rather prodigal with water over the years.

and forests for the wildlife... it's priority should be.

At the very least, postpone the dams and transfers to the future. It's starting to rain. Give nature a chance and don't make heads or tails of it.

Respectfully,
Mrs. S.M. Wallace

Buckman, Carolyn

From: Hubbard, Bradley <bhubbard@usbr.gov>
Sent: Friday, November 28, 2014 9:10 AM
To: Frances Mizuno; Buckman, Carolyn; Veronese, Gina
Subject: Fwd: Long-term water transfers

----- Forwarded message -----

From: **Suzette Welch** <booksontape@rocketmail.com>
 Date: Thu, Nov 27, 2014 at 8:20 AM
 Subject: Long-term water transfers
 To: "bhubbard@usbr.gov" <bhubbard@usbr.gov>

I urge you not to move forward with the proposed water transfers to San Luis and Delta Mendota Water Authority. I am in opposition to the timing of the water transfers “especially in periods of drought” and the size of the proposed water transfers which will allow water to be bought in northern California then sold to a desert area in Central California - the San Luis and Delta Mendota Water Authority.

The area to receive transfers of water from Northern California is a desert. They have ruined their aquifer by over pumping and now have subsidence so there is less underground space to store water the groundwater that they do get. What should be done in the South Central Valley is planting of annual crops in years when they have enough water in the area to allow these crops. Instead trees were planted there so that farmers could show that they needed water every year. Now these Southern factory farmers want us to ship water south. We have need of our water in Northern California to support our many family farms. We especially need to keep all the water possible in years like this year where there is not enough water due to a four year drought.

There is a big fallacy in your report. The hydrologic period analyzed in the EIS/EIR is from 1970-2003, neglecting the last 11 years because the model wasn't up-to-date. Thus the analysis doesn't take into account the current drought.

How can you say in your EIR that there will be no environmental impact on the area of origin of the water when there are already wells drying up in this area due to over pumping.

We have wells going dry right now in the foothills and in North and South Chico. People here don't have water to drink and you propose to take more surface water from willing sellers. These sellers are people with water rights and are just out to make money no matter the cost to the land. They sell the surface water and then they pump water out of the aquifer taking needed water from others and making the shallower wells run dry. Pumping the aquifer will drop the depth of water in the water table which will result in loss of our ecosystem. Our beautiful meadows and oak forests will die from lack of water. You will turn another part of California into a desert like the Owens Valley.

5

Suzette Welch
13 Hilda Way
Chico, Ca. 95926

--

Thanks,

Brad

Buckman, Carolyn

From: Frances Mizuno <frances.mizuno@sldmwa.org>
Sent: Monday, December 01, 2014 12:33 PM
To: Hubbard, Bradley; Buckman, Carolyn; Veronese, Gina
Subject: Comment Letter

[One more comment letter.](#)

From: Seamus Yeo [mailto:seamus22hk@gmail.com]
Sent: Monday, December 01, 2014 12:11 PM
To: Frances Mizuno
Cc: bwright@friendsoftheriver.org
Subject:

1893 Garden Ave, Apt 7
 Eugene, Oregon, 97403
 Nov 5th, 2014
 Seamus Yeo

Frances Mizuno
 San Luis & Delta-Mendota Water Authority
 842 6th St, Los Banos CA 93635
Phone: (209) 832-6200
Email: frances.mizuno@sldmwa.org

Dear Mr Mizuno,

I am writing regarding to your recent proposal for the Long Term Water Transfer, that was uploaded to the Environmental Impact Assessment government website on September 2014. I will be doing as part of a course assignment to review the Public Draft of the Environmental Impact Assessment.

The introductions and proposed actions are well informed in terms of history of the area, location and the different lakes that could be involved, service provided and companies that are involved. However, the lack of explanation on what the current infrastructure of CVP and what method would be used to transfer water from the seller to the buyer. The cost of maintenance of the 10 year period would be questioned and should be mentioned.

In each of the environmental aspect of this project will be assessed in the following paragraphs respectively; Water, Geology and Soil; Air Quality; Climate Change; Flood Control; Cumulative Effects.

In the assessment of Water, it has been well written for understanding the quality and quantity of supply and the water. Through the use of laws, regulations and information on each lake which water will be extracted, it has given a good over all look. However, the lack of details of each total capacity of water and how much water will be used during the transfer is questionable. The only information given was how much water could be extracted but no relation to the overall total amount of water.

In the Geology and soil, they have provided many different topography of maps regarding to the soil that are present around California, along with the different method of translocation of various soils. It would be good if you can provide a 3D infrastructure of the current CVP, and the area that they have been built on.

In Air Quality the data provided for different compounds, in direct impact of Carbon dioxide in water is noted and each different method of transferring water is noted. The cumulative effects are also noted well, there is no need for additional information.

4

In Climate Change, it is well written that the most direct issues are affecting the transfer. However, the indirect to animals and soil is a rather difficult to research in. Note that monitoring the possibility of invasive species invading upstream is a plausible situation, which is not noted in Cumulative effects. If there is an Accelerated erosion doing storm water, would it not also accumulate possible sediments that would damage flood control.

5

In the Flood control, the information provided is well responded and the mitigation and the acceptance of some area unable to endure flood possibility should be taken into account. However, the flood control also holds some of the key factors into the methane hold possible harm to the environment especially animals that could not survive in acidic environments.

6

This Draft Environmental Impact Assessment would provide a useful tool as it cover many aspects of environmental concern which will help the community in decision and project managers to decide. However, it could use a little more information about the water supply as ecologist and many other scientist in that field may question how much water is “sustainable”. You have only stated how much water could be taken out, without having mentioning the total amount of water that is current there.

7

Overall, I would like to say that in general that the draft environmental statement is well researched and very informative. I would like that if you can add additional material on a more local levels, as it would affect them the most and their knowledge from experience would affect the overall projects and the cost of maintenance over the 10 years and a timeline. In addition, I would like you to add additional information on monitoring as climate change on the over all levels of water and geology and soil, as those two would inhibit many of the long term water transfer and possible damage in the future.

Yours Faithfully
Seamus Yeo
Student, University of Oregon.



Meeting Notes

11/24/2014

MSCME

in Jacksonville, Fla.

(800) 462-9633 (USA only)

(904) 953-7114

Fax: (904) 953-2954

E-mail: cme-jax@mayo.edu

Dear Mr. Brad Hubbard.

I am strongly against the USBR proposal to facilitate the transfer of Sacramento Valley water (mainly by conjunctive use) to south of the Delta and San Francisco Bay water districts.

MSCME

in Rochester, Minn.

(800) 323-2688 (USA only)

(507) 284-2509

Fax: (507) 284-0532

E-mail: cme@mayo.edu

Several glaring lapses in the proposal stand out. Limiting the baseline years to 1973 to 2003 avoids the last decade of climate change effects and our severe, prolonged current drought.

In recent years the Sacramento Valley general water table has significantly dropped with accompanying ground subsidence.

Residential and agriculture wells have gone dry.

And the proposed water transfers will occur during drought and severe drought years - just when the immediate and long term harm to our river, streams and aquifer would be the greatest. The USBR suggestion that water tables will generally reconstitute in the future is completely unsubstantiated.

No consideration of the accumulative effects on the watershed ecology is included in the USBR analysis.

No significant long term economic analysis is evident comparing the transient benefit to the Westlands Water District versus the destruction of the Northern California Water Shed - the source of 60-70% of California water.

Please put science above political and lobbying pressure to preserve the Sacramento Valley Watershed - Thank you

Julian Zener

JULIAN ZENER
1621 N. CHERY ST.
CHICO, CA. 95926

JULIANZENER@
CONCAFW.NET



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: JOHN SCOTT

Organization (If applicable): BUTTE VALLEY COALITION

Address: 4370 TAO WAY, BUTTE VALLEY, CA 95965-8345

Phone: (530) 533-8394 Fax: ()

E-mail: john_lewis_scott@MSN.COM

Date: November 30, 2014

Comment:

THIS EIS/R MUST BE WITHDRAWN, BECAUSE
IT IS TOTALLY INADEQUATE AS ANY EIR/EIS
COULD EVER BE.

FOLLOW THE COMMENTS OF THE BUTTE
ENVIRONMENTAL COUNCIL. YOUR EIS/EIR IS
SO BAD THAT I FEEL I NEED TO
PROTECT AND MAINTAIN MY LEGAL RIGHTS
IN THIS MATTER.

Very Sincerely,

John Scott - individually and with
the Butte Valley Coalition.

Place
First Class
Stamp
Here

Long-Term Water Transfers Draft EIS/EIR

Brad Hubbard

Bureau of Reclamation

2800 Cottage Way, MP-410

Sacramento, CA 95825

Please fold, staple, stamp, and mail.

2014 DEC -1 PM 4:22
BUREAU OF RECLAMATION
MP-REGION

Nov-30, 2014

JOHN SCOTT

BUTTE VALLEY COALITION



Butte Environmental Council

Educating and advocating for the land, air, and water in Northern California since 1975



BUTTE-SUTTER BASIN AREA GROUNDWATER USERS

December 1, 2014

Brad Hubbard (USBR)
Frances Mizuno (SLDMWA)

We support the entire
12 page document submitted
by the Butte Environmental Council.
John Scott
advocate

Subject: Comments, Long-Term Water Transfers (LTWT) Environmental Impact Statement/Environmental Impact Report (EIS/R), September 2014

Butte Environmental Council (BEC) and the undersigned groups and individuals submit the following comments concerning Long-Term Water Transfers. The comments focus on the legal issues surrounding groundwater substitution water transfers and the technical deficiencies of the EIS/R. Concerned citizens of the northern Sacramento Valley recognize that it is long past the time needed to realize the limitations and variability of our natural water supply. We must learn to live within the confines of that system and stop the exploitation of groundwater and strive to improve protections of this critical, fail-safe source of life.

BEC's policy statement regarding water identifies our concerns for Northern Sacramento Valley water resources. Specifically, we believe that citizens should have control over local resources; that Northern California's watersheds must be protected for future generations; and that its ground and surface water must not be exported out of the area to address misuse, waste, and over-allocation. The undersigned groups and individuals submit these comments holding to one conviction:

The EIS/R should be withdrawn from public circulation until the issues listed herein can be adequately addressed.

Page 1 of 12

— pages 2 thru 11 are on file —

e. Water quality

The environmental assessment surrounding the LTWT completely ignores groundwater quality issues. There are numerous plumes throughout the Sacramento Valley for which the Department of Toxic Substance Control has oversight.

Conclusion

The EIS/R should be withdrawn from public circulation; and

The EIS/R should be modified to:


Reflect the elements and requirements of a programmatic EIS/R, strictly adhering to page limitations and tiering of appropriate project level environmental documentation; and

Reflect a legally appropriate lead agency, such as a group of agencies, including SLDMWA and the counties that overlie the DWR Bulletin 118 groundwater basins and confined (deeper) aquifers from which groundwater substitution transfers may occur, organized into a cooperative effort by contract, joint exercise of powers, or similar device.⁶

Sincerely,



Robyn Difalco
Executive Director
Butte Environmental Council



Carol Perkins
Water Policy Advocate
Butte Environmental Council



JOHN SCOTT

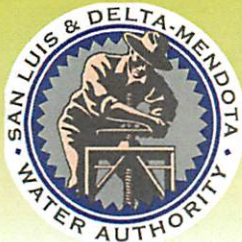
BUTTE VALLEY COALITION

BUTTE COUNTY, CA

⁶ 14 CCR § 15051 (d).



LONG-TERM WATER TRANSFERS DRAFT EIS/EIR COMMENT SHEET



There are several options to provide written comments. You can provide your written comments by turning in this form at the public meeting. You may also e-mail your comments directly to bhubbard@usbr.gov with the subject line "Long-Term Water Transfers" or mail this form to the Bureau of Reclamation (mailing address is on the back of this card). Whatever method you choose, please note that all written comments must be received by **5:00 p.m. (Pacific Standard Time) on December 1, 2014.**

PLEASE PRINT CLEARLY. PLEASE NOTE THAT ALL COMMENTS BECOME PART OF THE PUBLIC RECORD.

Name: JOHN LEWIS SCOTT
Organization (If applicable): BUTTE VALLEY COALITION
Address: 4370 TAO WAY, BUTTE VALLEY, CA 95965-8345
Phone: (530) 533-8394 Fax: ()
E-mail: john_lewis_scott@MSA.COM
Date: Nov 30, 2014

Comment: I support THE ENTIRE "12 PAGE COMMENTS"
SUBMITTED BY THE BUTTE ENVIRONMENTAL COUNCIL,
CHICO, CALIFORNIA; DATED DECEMBER 1, 2014.

VERY SINCERELY,

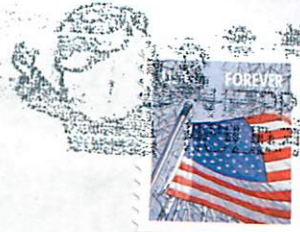
John Scott

JOHN SCOTT

PS: Please keep me current on future aspects of
this and all Long or Short Term Water Transfers
from North of the Sacramento Delta.

John & Sue Scott
4370 Tao Way
Butte Valley, CA 95965

01 DEC 2014 PM 6 L



Long-Term Water Transfers Draft EIS/EIR

Brad Hubbard

Bureau of Reclamation

2800 Cottage Way, MP-410

Sacramento, CA 95825

95825189899



Please fold, staple, stamp, and mail.



2014 DEC -1 PM 4:18
BUREAU OF RECLAMATION
MP-410

Appendix P

EIS/EIR Distribution List

This appendix includes the distribution list for the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR). Only names and affiliations, if applicable, are shown on this list. This list has been in development since the Notice of Intent and scoping meetings in 2011.¹

The Final EIS/EIR is available at
http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=18361.

Copies of the Final EIS/EIR are available for public review at the following locations:

(1) Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825,

(2) Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240-0001, and

(3) San Luis & Delta-Mendota Water Authority (SLDMWA), 842 6th Street, Los Banos, CA 93635.

The distribution list includes the following:

- Representatives from participating buyers and sellers.
- Representatives from other Federal, State, and local agencies that commented or expressed interest in the project.
- Representatives from non-governmental organizations that attended public meetings, provided comments, or expressed interest in the project.
- Interested members of the public that attended public meetings, provided comments, or expressed interest in the project.

¹ Reclamation and SLDMWA used scoping meeting and public hearing sign in sheets to help develop the distribution list. Some individuals that signed in did not provide email addresses or the handwriting was illegible. If a name or email address was missed, Reclamation and SLDMWA have made the EIS/EIR available at identified locations and on Reclamation's website listed above.

P.1 Buyers and Sellers

Table P-1. Buyers and Sellers Distribution List

Name	Agency
Al Montna	Garden Highway Mutual Water Company
Andrea Clark	Downey Brand
Andrew Hitchings	Somach, Simmons, Dunn
Benjamin Bray	East Bay Municipal Utility District
Bradley Arnold	South Sutter Water District
Brett Ewart	City of Sacramento
Brett Gray	Natomas Central Mutual Water Company
Brett Scheidel	Pleasant Grove-Verona Mutual Water Company
Bryan Busch	Reclamation District 108
Christy Chung	Santa Clara Valley Water District
Dan Sherry	City of Sacramento
Dan York	Sacramento Suburban Water District
Daniel Griffith	Sycamore Mutual Water Company
Darren Cordova	MBK Engineers
Dave Underwood	Sacramento County Water Agency
David and Alice Te Velde Revocable Family Trust	Te Velde Revocable Trust
David Guy	Nor Cal Water Association
Dee Swearingen	Natomas Central Mutual Water Company
Dennis Falaschi	Pacheco Water District, Panoche Water District
Devin Mody	Santa Clara Valley Water District
Dustin Cooper	Anderson-Cottonwood Irrigation District, Butte Water District, Cordua Irrigation District
Edward Formosa	Sacramento Suburban Water District
Einar Maisch	Placer County Water Agency
Frances Mizuno	SLDMWA
Garth Hall	East Bay Municipal Utility District
Geoff Rabone	Merced Irrigation District
H.E. Niederberger, Jr.	Sacramento County Water Agency
Jan Lee	East Bay Municipal Utility District
Jeff Cattaneo	San Benito County Water District
Jeff Quimby	Contra Costa Water District
John Bennett	Eagle Field Water District
John Brennan	Goose Club Farms, Tule Basin Farms
John Sweigard	Merced Irrigation District
Jose Gutierrez	Westlands Water District
Kerry Schmitz	Sacramento County Water Agency
Leah Orloff	Contra Costa Water District
Lewis Bair	Reclamation District 108
Lucinda Shih	Contra Costa Water District
Marc Van Camp	MBK Engineers
Marcos Hedrick	Mercy Springs Water District
Mark Orme	Butte Water District
Martin McIntyre	San Luis Water District

Name	Agency
Marty Stripling	River Garden Farms
Max Sakato	Sutter Mutual Water Company
Mike Hardesty	Reclamation District 2068
Mike Tognolini	East Bay Municipal Utility District
Nicole Van Vleck	Garden Highway Mutual Water Company
Nicoli Nicholas	Pleasant Grove-Verona Mutual Water Company
Phil McMurray	Merced Irrigation District
Robert Roscoe	Sacramento Suburban Water District
Ryan Fong	Conaway Preservation Group
Scott Morris	Placer County Water Agency
Scott Tucker	Pelger Mutual Water Company
Stan Wangberg	Anderson-Cottonwood Irrigation District
Steve Bayley	City of Tracy
Steve Fausone	Laguna Water District
Steve Gidaro	Cranmore Farms
Steven Sloan	Oro Loma Water District
Thad Bettner	Glenn-Colusa Irrigation District
Todd Manley	Nor Cal Water Association (NCWA)
Tom Birmingham	Broadview Water District, Westlands Water District
Tom Glover	Westlands Water District
Walter Cotter	Browns Valley Irrigation District

P.2 Federal, State and Local Agencies

Table P-2. Federal, State, and Local Agencies Distribution List

Name	Agency
Barbara Sachs	Reclamation District 1004
Bill Skinner	City of Coalinga
Bobby Pierce	West Stanislaus Irrigation District
Brad Matson	Richvale Irrigation District
Brendan Vieg	City of Chico
Candace Williams	Thomes Creek Water District
Carrie Rohr	Proberta Water District
Charles Orwick	Ash Creek Watershed, Battle Creek Watershed
Cindy Messer	Delta Stewardship Council
Curt Aikens	Yuba County Water Agency
Dale Melville	Dudley Ridge Water District
Dan Peterson	Sutter County
Daniel Ruiz	Maxwell Irrigation District, Meridian Farms
Danny Wade	Tranquility Irrigation District
David Coxey	Bella Vista Water District
David Luker	Desert Water Authority
David Weisenberger	Banta Carbona Irrigation District
Dennis Bentz	Kirkwood Water District
Dennis Westcot	San Joaquin River Group Authority
Diane Riddle	State Water Resources Control Board

Long-Term Water Transfers
Final EIS/EIR

Name	Agency
Don Ridenhour	Napa County Flood Control and Water Conservation District
Donita Hendrix	Dunnigan Water District
Doug Headrick	San Bernardino Valley Municipal Water District
Doug Teeter	Butte County Board of Supervisors
Ed Kriz	City of Roseville
e-PUR	South Delta Water Agency, Central Delta Water Agency
Eric Chapman	State Water Contractors
Eric Wedemeyer	Shasta County
Erick H Johnson	The Water Agency, Inc
Ernie Ohlin	Tehama County
Frank Apgar	Kings County
Fritz Grimmer	Cortina Water District
Garwin Yip	National Oceanic Atmospheric Association (NOAA)
Gina Darin	California Department of Water Resources (DWR)
Glenn Mathis	4M Water District
Greg Norby	City of Redding
Guillermo Santillan	Meridian Farms
Helen Birss	California Department of Fish and Wildlife (CDFW)
Jaime Traynham	Davis Water District
James D. Hartley	Avenal State Prison
James Lowden	Corning Water District
James M. Beck	Kern County Water Agency
Jane Carter	Carter Mutual Water Company
Jeff Ford	Castaic Lake Water Agency
Jeff Kightlinger	The Metropolitan Water District of Southern California
Jeff McLain	NOAA
Jeff Shields	South San Joaquin Irrigation District
Jeff Sutton	Tehama-Colusa Canal Authority
Jennifer Buckman	Friant Water Authority
Jim Wallace	Colusa Drain Mutual Water Company
John Beam	Grasslands Water District
John Herrick	South Delta Water Agency, Central Delta Water Agency
John Mallyon	James Irrigation District, RD 1606
Karen Huss	Sacramento Metropolitan Air Quality Management District
Kathleen Martyn Goforth	United States Environmental Protection Agency
Kim Forrest	United States Fish and Wildlife Service (USFWS)
Kirby Brill	Mojave Water Agency
Lance Boyd	Princeton-Codora-Glenn ID, Provident Irrigation District
Larry Rodriguez	Kern County Water Agency
Laurie Mikkelsen	Colusa Indian Community
Lester Messina	Glenn County
Linda Bond	DWR
Lynn Phillips	Sutter Extension Water District
Mark Gilkey	Tulare Lake Basin Water Storage District
Maureen Kirk	Butte County
Michael Alves	Glide Water District, Kanawha Water District
Mike Wade	California Farm Water Coalition
Nancy Quan	DWR
Nina Bicknese	USFWS

Name	Agency
Osha Meserve	Local Agencies of the North Delta
Patrick Blacklock	Yolo County
Paul Bartkiewicz	Yuba County Water Agency
Paul D. Forsberg	CDFW
Paul Gosselin	Butte County
Paul Piraino	Alameda County Water District
Peter Rietkirk	Patterson Irrigation District
Ralph Bennett	San Joaquin National Cemetery (Department of Veteran Affairs)
Ric Ortega	Grasslands Water District
Ricardo Ortega	Grassland Water District
Rick Gillmore	Byron Bethany Irrigation District
Rick Massa	Orland Unit Water Users Association
Robert Harper	Westside Water District
Robert Toone	Palmdale Water District
Roger Jaegel	Trinity County
Ron La Grande	La Grande Water District
Ron Lee	Hothouse Water District
Russell Fuller	Antelope Valley-East Kern Water Agency
Scott Cantrell	CDFW
Scott Matyac	Yuba County Water Agency
Shauna Lorance	San Juan Water District
Shelly Murphy	Colusa County Water District
Steve Hackney	Colusa County
Steve Hirsch	The Metropolitan Water District of Southern California
Steve Kaiser	West Side Irrigation District
Steve Knell	Oakdale Irrigation District
Susan King	Orland-Artois Water District
Ted Trimble	Western Canal Water District
Terry Erlewine	State Water Contractors
Tom Filler	DWR
Vickie Newlin	Butte County
Walter Sadler	City of Folsom
William Brennan	Central Coast Water Agency
William Harrison	Del Puerto Water District, Oak Flat Water District

P.3 Non-Governmental Organizations

Table P-3. Non-Governmental Organizations Distribution List

Name	Group
Barbara Vlamis	AquAlliance
Bill Jennings	California Sportfishing Protection Alliance
Carol Perkins	Butte Environmental Council (BEC)
Carolee Krieger	California Water Impact Network
Carolyn Short	Butte Valley Coalition
Celeste Garcia	Sierra Club
Chelsea Tu	Center for Biological Diversity

Name	Group
Christine Nelson	Southwest Chico Toxics Task Force
Dave Garcia	Frack Free Butte
ECONorthwest	AquAlliance, California Sportfishing Protection Alliance, Aqua Terra AERIS Law Group
EJ Burkett	AquAlliance
Elizabeth Devereaux	AquAlliance
Grace Marvin	Sierra Club
James Brobeck	AquAlliance
Jay Ziegler	The Nature Conservancy, California Chapter
Jeffrey Volberg	California Waterfowl
John Scott	Butte Valley Coalition
Joni Stellar	Frack-Free Butte County
Julian Zener	Sierra Club
Kit Custis	AquAlliance, California Sportfishing Protection Alliance, Aqua Terra AERIS Law Group
Kyran Mish	AquAlliance, California Sportfishing Protection Alliance, Aqua Terra AERIS Law Group
Mark Biddlecomb	Ducks Unlimited
Nani Teves	BEC
Nelson Parmerter	Sierra Club
Rachel Zwillinger	Defenders of Wildlife
Robyn DiFalco	BEC
Sharon Fritsch	Sierra Club
Suzette Welch	Sierra Club
Tom Cannon	AquAlliance, California Sportfishing Protection Alliance, Aqua Terra AERIS Law Group

P.4 Individuals

Table P-1. Individuals Distribution List

Name
Aaron Ferguson
Allen Carrier
Amalie Sorenson
Andrew McClure
Barbara Hennigan
Bob Adams
Bob Hennigan
Bruce Smith
C. Wesley Strickland
Carl Schuhr
Cathy Busch
Cathy Webster
Charlie Yarbrough
Chuck Greenwood

Name
Cliff De Tar
Dan Everhart
Dan Frisk
Dave Walker
David Frankel
DeAnne Lory
Debbie Kick
Debbie MacTavish
Denise McNeil
Dennis Boyd
Diana Sue Good
Diane Monson
Douglas Wylie
Edwin Roland McNutt
Elena Middleton
Ellen Walker
Eric Miller
Eric Robinson
Fawnna Montgomery
Frank Prentice
Gary Kienlen
Gary Middleton
GeneAnna McMillan
Geoffrey Baugher
George McArthur
Greg Amaral
Greg Young
H. Elena Middleton
Heather Gray
Idie Adams
J Barton
Jack Baber
Jain Redond
James Bennet
Jason Flanders
Jeanne Shelsky
Jeanne Zolezzi
Jill Pedrozo
John Dizzal
John Gray
John Johnson
John MacTavish
John Scott
Joshua M. Horowitz
Judy Vickrey
Julian Zener
Karen Stinson
Keith Landrum
Ken Fleming

Long-Term Water Transfers
Final EIS/EIR

Name
Kevin O' Brien
Kristi Bennett
Lance Wirtanen
Les Butler
Lieg Garton
Lila Prentice
Liliana Scarafia
Lily Rothrock
Linda Calbreath
Linda Lohjse
Lloyd Cleghorn
Lynne Elhardt
Marcell Gareis
Margaret Rader
Margaret Swick
Maria LaRocca
Marianna Love
Mark Montgomery
Mary McCluskey
Mat Bacier
Melinda Teves
Misty Stewart
Nancy Praizler
Nancy Schleiger
Nevada Smith
Norma Samra
O.J. McMillan
Paul Johnson
Paula Sunn
Peter Jodaitis
Peter Rather
Peter Samra
Raul Morales
Ray Varlinsky
Richard Hauer
Richard Thieriot
Rob Montgomery
Rob Swartz
Robin Keehn
Ruthann Christensen
Sally Wallace
Sandy Boyd
Scott Lape
Seamus Yeo
Sherri Scott
Stephen Sayre
Steve O'Bryan
Steven Hammond
Susan Schuhr

Appendix P
EIS/EIR Distribution List

Name
Susan Sullivan
Susie Lawing
Suzette Welch
Theodore A. Chester
Thom Shelsky
Tony St. Amant
Virginia Freeman
Walter Wangsgard
Wes Heitman
William Funke
William Tefteller
Zach Peek

This page left blank intentionally.